

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

119.

CRM-M No.59290 of 2023 (O&M)

Date of Decision:28.11.2023

Sukhmanjit Singh Dhindsa

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Shivya Sehgal, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 25.08.2023 (Annexure P-3) vide which the application filed by the petitioner for getting his statement recorded by way of video conferencing through server room at the Civil Court, Dasuya has been illegally and erroneously dismissed in FIR No.144 dated 13.09.2019 registered under Section 408 IPC at the Police Station Dasuya, District Hoshiarpur as well as order dated 25.10.2023 (Annexure P-4) whereby evidence of the prosecution has been closed by court order.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is the complainant in the aforementioned FIR. The trial of the case is pending before the learned Judicial Magistrate 1st Class, Dasuya. The petitioner is permanent resident of Canada and at the time of the recording of the prosecution witness, an application was filed by the learned additional public prosecutor for recording the statement of the petitioner through video

conferencing facility. The learned trial Court initially allowed the application vide order dated 11.07.2023 (Annexure P-1) and directed recording evidence of the petitioner as per the directions issued by the Hon'ble Supreme Court in ***State of Maharashtra Vs. Dr. Praful B. Desai 2003 (2) RCR (Criminal) 770***. However, evidence of the petitioner could not be recorded through the Coordinators at the Indian and Canadian Embassy due to frayed diplomatic relations between both the countries at that time. The petitioner once again requested the learned trial Court by filing application on 25.08.2023 (Annexure P-2), however, the said application was dismissed by the order of even date. On 09.10.2023, counsel for the petitioner sought adjournment on the ground that the diplomatic relationship between the India and Canada were strained and therefore, he was not able to get visa to visit India for recording his evidence. The learned trial Court granted adjournment only for two weeks vide order dated 09.10.2023 without considering the ongoing diplomatic standoff between Indian and Canadian governments and the fact that the petitioner was not in a position to travel to India. In spite of aforesaid unavoidable circumstances, the trial Court directed the prosecution to conclude evidence on 25.10.2023 either through video conferencing of the petitioner or in the court, as last opportunity. On 25.10.2023, the learned trial Court closed the evidence of the prosecution by order and posted the case for 02.11.2023 for recording statement of the accused under Section 313 Cr.P.C.

3. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, the case is taken up for final disposal.

4. In Part H, Volume V, Chapter 1-H of the High Court Rules and Orders Model Rules on Video Conferencing were inserted in terms of the Rules framed by the Hon’ble Supreme Court of India. The terms ‘Coordinator’, ‘Court Point’, ‘Court User’ and ‘Designated Video Conferencing Software’ have been defined under Rule 2 of the said Rules. Sub rule (viii) of Rule 2 defines ‘Exceptional Circumstances’ which include a pandemic, natural calamities, circumstances implicating law and order and matters relating to the safety of the accused and witnesses. The general principles governing video conferencing have been provided under Rule 3 and what kind of apparatus or devices can be used for conducting proceedings by video conferencing at Court Point and at the Remote Point, as has been provided under Rule 4. The provision for a Coordinator has been made both at the Court Point and the Remote Point from where the required person is to be examined or heard. The relevant Rules are reproduced as under:-

“5. Preparatory Arrangements

5.1 There shall be a Coordinator both at the Court Point and at the Remote Point from which any required person is to be examined or heard. However, Coordinator may be required at the Remote Point only when a witness or a person accused of an offence is to be examined.

5.2 In the civil and criminal Courts falling within the purview of the district judiciary, persons nominated by the High Court or by the concerned District Judge, shall perform the functions of Coordinator(s) at the Court Point as well as the Remote Point as provided in Rule 5.3

5.3 The Coordinator at the Remote Point may be any of the following:

<i>Sub Rule</i>	<i>Where the Advocate or Required Person is at the following Remote Point:-</i>	<i>The Remote Point Coordinator shall be:-</i>
<i>5.3.1</i>	<i>Overseas</i>	<i>An official of an Indian Consulate / the relevant Indian Embassy/ the</i>

		<i>relevant High Commission of India.</i>
5.3.2	<i>Court of another state or union territory within the territory of India.</i>	<i>Any authorized official nominated by the concerned District Judge or High Court, as the case may be.</i>
5.3.3	<i>Mediation Centre or office of District Legal Services Authority (including Taluka Legal Services Committee)</i>	<i>Any authorized person/ official nominated by the Chairperson or Secretary of the concerned District Legal Services Authority or High Court, as the case may be.</i>
5.3.4	<i>Jail or prison</i>	<i>The concerned Jail Superintendent or Officer in-charge of the prison.</i>
5.3.5	<i>Hospitals administered by the Central Government, the State Government or local bodies</i>	<i>Medical Superintendent or an official authorized by them or the person in charge of the said hospital</i>
5.3.6	<i>Observation Home, Special Home, Children's Home, Shelter Home, or any institution referred to as a child facility (collectively referred to as child facilities) and where the Required Person is a juvenile or a child or a person who is an inmate of such child facility.</i>	<i>The Superintendent or Officer in charge of that child facility or an official authorized by them.</i>
5.3.7	<i>Women's Rescue Homes, Protection Homes, Shelter Homes, Nari Niketans or any institution referred to as a women's facility (collectively referred to as women's facilities)</i>	<i>The Superintendent or Officers In-charge of the women's facility or an official authorized by them.</i>
5.3.8	<i>In custody, care or employment of any other government office, organization or institution (collectively referred to as institutional facilities).</i>	<i>The Superintendent or Officer In-charge of the institutional facility or an official authorized by them.</i>
5.3.9	<i>Forensic Science Lab</i>	<i>The Administrative officer in-charge or their nominee.</i>
5.3.10	<i>In case of any other location</i>	<i>The concerned Court may appoint any person deemed fit and proper who is ready and willing to render their services as a Coordinator to ensure that the proceedings are conducted in a fair, impartial and independent manner and according to the</i>

		<i>directions issued by the Court in that behalf.</i>
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5.4 When a Required Person is at any of the Remote Points mentioned in Sub Rules 5.3 and video conferencing facilities are not available at any of these places the concerned Court will formally request the District Judge, in whose jurisdiction the Remote Point is situated to appoint a Coordinator for and to provide a video conferencing facility from proximate and suitable Court premises.

5.5 The Coordinators at both the Court Point and Remote Point shall ensure that the recommended requirements set out in Rule 4 are complied with, so that the proceedings are conducted seamlessly.

5.6 The Coordinator at the Remote Point shall ensure that:

5.6.1 All Advocates and/or Required Persons scheduled to appear in a particular proceeding are ready at the Remote Point designated for video conferencing at least 30 minutes before the scheduled time.

5.6.2 No unauthorised recording device is used.

5.6.3 No uauthorised person enters the video conference room when the video conference is in progress.

5.6.4 The person being examined is not prompted, tutored, coaxed, induced or coerced in any manner by any person and that the person being examined does not refer to any document, script or device without the permission of the concerned Court during the course of examination.

5.7 Where the witness to be examined through video conferencing requires or if it is otherwise expedient to do so, the Court shall give sufficient notice in advance, setting out the schedule of video conferencing and in appropriate cases may transmit non-editable digital scanned copies of all or any part of the record of the proceedings to the official email account of the Coordinator of the concerned Remote Point designated in accordance with Rule 5.3.

5.8 Before the scheduled video conferencing date, the Coordinator at the Court Point shall ensure that the Coordinator at the Remote Point receives certified copies, printouts or a soft copy of the non-editable

scanned copies of all or any part of the record of proceedings which may be required for recording statements or evidence, or for reference. However, these shall be permitted to be used by the Required Person only with the permission of the Court.

5.9 Whenever required the Court shall order the Coordinator at the Remote Point or at the Court Point to provide-

5.9.1 A translator in case the person to be examined is not conversant with the official language of the Court.

5.9.2 An expert in sign languages in case the person to be examined is impaired in speech and/or hearing.

5.9.3 An interpreter or a special educator, as the case may be, in case a person to be examined is differently abled, either temporarily or permanently.

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8. Examination of persons

8.1 Any person being examined, including a witness shall, before being examined through video conferencing, produce and file proof of identity by submitting an identity document issued or duly recognized by the Government of India, State Government, Union Territory, or in the absence of such a document, an affidavit attested by any of the authorities referred to in Section 139 of the CPC or Section 297 of the CrPC, as the case maybe. The affidavit will inter alia state that the person, who is shown to be the party to the proceedings or as a witness, is the same person, who is to depose at the virtual hearing. A copy of the proof of identity or affidavit, as the case may be, will be made available to the opposite party.

8.2 The person being examined will ordinarily be examined during the working hours of the concerned Court or at such time as the Court may deem fit. The oath will be administered to the person being examined by the Coordinator at the Court Point.

8.3 Where the person being examined, or the accused to be tried, is in custody, the statement or, as the case may be, the testimony, may be recorded through video conferencing. The

Court shall provide adequate opportunity to the under-trial prisoner to consult in privacy with their counsel before, during and after the video conferencing.

8.4 Subject to the provisions for examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgement with the Court in this behalf.

8.5 If a person is examined with reference to a particular document then the summons to witness must be accompanied by a duly certified photocopy of the document. The original document should be exhibited at the Court Point in accordance with the deposition of the concerned person being examined.

8.6 The Court would be at liberty to record the demeanour of the person being examined.

8.7 The Court will note the objections raised during the deposition of the person being examined and rule on them.

8.8 The Court shall obtain the signature of the person being examined on the transcript once the examination is concluded. The signed transcript will form part of the record of the judicial proceedings. The signature on the transcript of the person being examined shall be obtained in either of the following ways:

8.8.1 If digital signatures are available at both the concerned Court Point and Remote Point, the soft copy of the transcript digitally signed by the presiding Judge at the Court Point shall be sent by the official email to the Remote Point where a print out of the same will be taken and signed by the person being examined. A scanned copy of the transcript digitally signed by the Coordinator at the Remote Point would be transmitted by official email of the Court Point. The hard copy of the signed transcript will be dispatched after the testimony is over, preferably within three days by the Coordinator at the Remote Point to the Court Point by recognized courier/ registered speed post.

8.8.2 If digital signature are not available, the printout of the transcript shall be signed by the presiding Judge and the representative of the parties, if any, at the Court Point and shall be sent in non-editable scanned format to the official email account of the Remote Point, where a printout of the same will be taken and signed by the person examined and countersigned by the Coordinator at the Remote Point. A non-editable scanned format of the transcript so signed shall be sent by the Coordinator of the Remote Point to the official email account of the Court Point, where a print out of the same will be taken and shall be made a part of the judicial record. The Hard copy would also be dispatched preferably within three days by the Coordinator at the Remote Point to the Court Point by recognized courier/ registered speed post.

8.9 An audio-visual recording of the examination of person examined shall be preserved. An encrypted master copy with hash value shall be retained as a part of the record.

8.10 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect the privacy of the person examined bearing in mind aspects such as age, gender, physical condition and recognized customs and practices.

8.11 The Coordinator at the Remote Point shall ensure that no person is present at the Remote Point, save and except the person being examined and those whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue.

8.12 The Court may also impose such other conditions as are necessary in a given set of facts for effective recording of the examination (especially to ensure compliance with Rule 5.6.4)

8.13 The examination Shall, as far as practicable, proceed without interruption or the grant of unnecessary adjournments. However, the Court or the Commissioner as the case may be,

will be at liberty to determine whether an adjournment should be granted, and if so, on what terms.

8.14 The Court shall be guided by the provisions of the CPC and Chapter XXIII, Part B of the CrPC, the Evidence Act and the IT Act while examining a person through video conferencing.

8.15 Where a Required Person is not capable of reaching the Court Point or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such circumstances the Court may direct the use of portable video conferencing system. Authority in this behalf may be given to the concerned Coordinator and/or any person deemed fit by the Court. 8.16 Subject to such orders as the Court may pass, in case any party or person authorized by the party is desirous of being physically present at the Remote Point at the time of recording of the testimony, such a party shall make its own arrangement for appearance/representation at the Remote Point.

9. Exhibiting or Showing Documents to Witness or Accused at a Remote Point

If in the course of examination of a person at a Remote Point by video conferencing, it is necessary to show a document to the person, the Court may permit the document to be shown in the following manner:

9.1 If the document is at the Court Point, by transmitting a copy or image of the document to the Remote Point electronically, including through a document visualizer; or

9.2 If the document is at the Remote Point, by putting it to the person and transmitting a copy/image of the same to the Court Point electronically including through a document visualizer. The hard copy of the document counter signed by the witness and the Coordinator at the Remote Point shall be dispatched thereafter to the Court Point via authorized courier/ registered

speed post or any other authorized means such as special messenger etc.”

5. The Hon’ble Supreme Court in ***Dr. Praful B. Desai*** (supra) has allowed the witness, who was living in USA to record his statement by way of video conferencing. The witness was willing to depose but was not willing to come to India to be present physically before the learned trial Court and the Hon’ble Supreme Court has held that the evidence in the criminal trial can be recorded through the video conferencing in terms of Section 273 Cr.P.C. The evidence of electronic record i.e. evidence by video recording can be produced as evidence in terms of Section 3 of the Indian Evidence Act and admissibility of such evidence is permissible in terms of Section 65A and 65B of the said Act.

6. This Court in ***Sucha Singh Vs. Ajmer Singh and another 2018 (3) RCR (Civil) 327*** has allowed recording of evidence by way of video conferencing through mobile or computer, while noticing that the witness is in USA and there is a difference of approximately 12 hours of time and it would be difficult for the witness to approach the public authority at night time and use the video conferencing facility. Therefore, in view of the availability of many applications like Facetime, Whatsapp, Skype, the witness was allowed to be examined by way of video conferencing through mobile.

7. Even during the COVID-19 pandemic, statements of the witnesses were used to be recorded by way of video conferencing and directions in this regard were issued by this Court in ***Sumati Gulhati Vs. Prateek Bajaj 2021 (3) RCR (Civil) 383***. Even a Division Bench of this Court in ***State of Punjab Vs. Mohinder Singh 2013 (4) RCR (Civil) 423*** has issued necessary directions for recording of evidence of medical experts through video

conferencing, keeping in view the inconvenience caused to medical officers especially in injury cases to travel and depose by appearing physically before the trial Court.

8. As such, keeping in view the proposition that the existing provisions of the Criminal Procedure Code permit recording of evidence by way of video conferencing and such procedure has been duly recognized by this Court by inserting Model Video Conferencing Rules as circulated by the Hon'ble Supreme Court. The recourse to record evidence through video conferencing is all the more necessary when attendance of a witness cannot be procured physically and any delay would affect the progress of the trial, which would cause great hardship and inconvenience to the witness by travelling a long distance to depose. The evidence of the petitioner being complainant is necessary for the pursuits of justice and the mechanism of fair trial as enshrined under Article 21 of the Constitution of India is not only available to the accused but it exists for the complainant victim as well and depriving an opportunity to the petitioner to depose through video conferencing, who is stuck in Canada due to a diplomatic standoff between India and Canada, would be violative of his right to free and fair trial under Article 21 of the Constitution.

9. Once the detailed directions have been issued by the Hon'ble Supreme Court and Model Video Conferencing Rules have been framed by the Hon'ble Apex Court, similar Rules have been framed by this Court, examination of the witnesses through video conferencing should be encouraged, which would expedite the trial and would reduce the unnecessary footfall in the court premises. It would also be in the interest of justice and more time and cost efficient to both individual litigants and courts, as unnecessary inconvenience and hardship to the witnesses must be

avoided. Recording of evidence through video conferencing would be more convenient and less traumatic for children, women and victims of abuse, much less, differently-abled persons who cannot attend physical hearings in the court rooms conveniently.

10. Keeping in view the strained diplomatic relations between India and Canada owing to which petitioner would not be in a position to procure visa and travel to India and the fact that closing of the evidence by order would cause grave prejudice to the petitioner being the complainant and render undue advantage to the accused, the impugned orders dated 25.08.2023 (Annexures P-3) and 25.10.2023 (Annexure P-4) are set aside and following directions are issued for the purpose of recording statement of the petitioner-complainant:-

- (i) Evidence of the petitioner shall be recorded through video conferencing by due involvement of authorized Remote Point Controller, in accordance with the High Court Rules and Orders.
- (ii) The trial Court is directed to appoint a Coordinator with regard to the technical aspects of video conferencing in the Indian High Commission in Canada.
- (iii) Evidence of the petitioner shall be recorded during working hours of trial Court or at such time, as the Court may deem fit. The oath will be administered to the petitioner by the Coordinator at the Court Point.
- (iv) Video conferencing is ordered to be conducted as per the model rules/guidelines of this Court.
- (v) The petitioner shall bear the costs/expenses of the video conferencing to be undertaken in Canada.

- (vi) The Coordinator at the Remote Point shall ensure that no other person is present at the Remote Point except the person being examined and those, whose presence is deemed administratively necessary by the Coordinator for the proceedings to continue.
- (vii) The trial Court is at liberty to impose such other conditions as are necessary in a given set of facts for effective recording of the evidence of the petitioner.

11. The present petition is allowed in above terms, without issuing notice to private respondents No.2 and 3, in order to save time of the Court and to avoid litigation expenses to be incurred by them.

(HARPREET SINGH BRAR)
JUDGE

November 28, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No