

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

CRM-M-47863-2024

Date of Decision- 24.09.2024

MAJOR SINGH

.....PETITIONER

VERSUS

JASPAL SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Khushagra Mahajan, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court has been invoked under section 528 of the Bhartiya Nagrik Surakasha Sanhita, 2023 seeking quashing of the impugned order dated 06.09.2024(Annexure P-4), passed by the learned Judicial Magistrate Ist Class, Amritsar, in the complaint being COMI No.53 dated 15.02.2019 titled "Jaspal Singh Vs. Major Singh & Anr." allowing the application of the respondent/complainant to record his pre-charge evidence through video conferencing.

2. In nut-shell the dispute in the instant case is that respondent assured the petitioner to facilitate him to send him abroad to Australia as his brother is the permanent citizen of Australia and the deal was fixed at Rs.25 lacs and in order to meet out these expenses, the complainant sold his landed property to provide a sum of Rs.13.00 lacs to the proposed accused—Major Singh (petitioner herein) in the presence of his wife- Sarabjit Kaur and also

one Dalbir Singh. It is claimed by the complainant that Major Singh promised the complainant to send him abroad at the earliest and demanded the required documents for visa facilitation on his email address. Subsequently, Major Singh informed the complainant telephonically that his brother – Gurcharan Singh has demanded money for getting the visa whereupon an amount of Rs.6,016,60/- was transferred through RTGS on 14.03.2017 in the bank account of Gurcharan Singh maintained with Common Wealth Bank of Australia and an amount of Rs.1,10,000/- was given in cash to Major Singh after its withdrawal from Axis Bank on the same day. Ultimately, according to the complainant, neither he was sent abroad nor his money was returned by Major Singh. On these assertions, the complainant filed criminal complaint against Major Singh and his brother – Gurcharan Singh under Section 420/34 IPC. The complainant moved an application seeking personal exemption and permission to record his pre-charge evidence, through video conferencing,(Annexure P-2),on the ground that after filing the complaint, the complainant has left India and went abroad to USA and is presently in USA (address duly mentioned in the application) and is unable to appear in person to record his pre-charge evidence, however, he is using Whatsapp Mobile No.98151-43782 and his wife, being one of the witnesses, is pursuing the present case with the help of standing counsel. On notice of the application, the accused/petitioner – Major Singh filed his reply to the application (Annexure P-3), taking the preliminary objections that the application is merely an abuse of process of law and that the wife of the complainant has no locus standi or competence to file the application. However, on merits also the averments in the application were denied as copy of the passport of the complainant is not attached with the application.

3. The learned trial Court after considering the pleadings of both the sides and hearing counsel for both the sides, has reached to the conclusion that there is no impediment in allowing the application of the complainant to record his pre-charge evidence through video conferencing because evidence of the complainant is necessary for the adjudication of the present complaint and moreover, no prejudice will be caused to opposite party as they would get an opportunity to cross-examine the complainant and, thus, allowed the application vide order dated 06.09.2024, which is being impugned in this petition.

4. It is contended by the learned counsel for the petitioner that the order passed by the Judicial Magistrate Ist Class, Amritsar (for short-‘trial Court’), in allowing the application is absolutely illegal and erroneous on the face of it because wife of the petitioner, who is one of the witnesses, is pursuing the present case with the help of standing counsel. There is no document being placed on record by the complainant/respondent that he went abroad at any point of time before filing complaint, therefore, there is no evidence to this effect, however, the learned trial Court has allowed the application in the absence of any evidence. Moreover, the order of the learned trial Court is a non-speaking order and that the order passed by the learned trial Court is in contravention to the Video Conference Rules placed on file as Annexure P-5, therefore, the impugned order is liable to be set aside.

5. Heard learned counsel for the petitioner and also perused case file.

6. It is quite surprising and astonishing that what the petitioner is afraid of, if the complainant wants to get his pre-charge evidence recorded

through Video conferencing because in any case it will be recorded in the presence of the accused/petitioner in his counsel's presence and not at their back and also, the accused will certainly get an opportunity to cross-examine the complainant.

7. Moreso, the procedure to record pre-charge evidence would remain the same, had the application seeking exemption and recording of pre-charge evidence through video conferencing been not there.

8. As such, this Court finds it difficult to ascertain as to what made the petitioner file unwarranted petition when the procedural law is to be followed as prescribed under procedural laws. However, the bona fides of the complainant are very clear and specific that he has given his address of USA and Whatsapp number in the application filed on his behalf so that his pre-charge evidence gets recorded on the date fixed by the learned trial Court. Hence, this Court does not find any illegality and perversity in the order allowing the application to record pre-charge evidence of the complainant through video conferencing.

9. In addition, it will be relevant to refer to the provisions of Video Conferencing Rules mentioned at Annexure P-5 wherein its perusal makes it amply clear that no rule has been referred in specific by the learned counsel for the petitioner in the present petition. However, sub-rule 5.3.1 of Rule 5.3 under Main Rule (5) under Heading – *“Preparatory Arrangements”* provides *“Where the Advocate or Required Person is at the following Remote Point”* that *“The Remote Point Coordinator shall be – An official of an Indian Consulate / the relevant Indian Embassy / the relevant High Commission of India”*. The petitioner, at this stage, has not pointed out that how the compliance of the Rules, Annexure P-5, has not been made. Therefore, at this

stage, no cause of action lies in favour of the aggrieved party because the evidence is yet to be recorded and to ascertain whom the trial Court considers as the “Remote Point Coordinator” for the purpose.

10. Even otherwise, no prejudice is going to be caused to the accused/petitioner. In fact, the cause of action to the petitioner will arise at the time when the complainant/respondent does/does not appear through Video Conferencing mode on the date fixed by the learned trial Court for the purpose and in the event of any disobedience of the rules, Annexure P-5, as have been relied upon by the petitioner, before this Court.

11. Consequently, this Court opines that the present petition is premature at this stage and accordingly, the same is hereby dismissed by upholding the order dated 06.09.2024, Annexure P-4, of the Judicial Magistrate Ist Class, Amritsar, in the complaint being COMI No.53 dated 15.02.2019 titled “Jaspal Singh Vs. Major Singh & Anr.” thereby allowing the application of the respondent/complainant to record his pre-charge evidence through video conferencing.

(SANDEEP MOUDGIL)
JUDGE

24.09.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>