



2024:DHC:1467



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Order delivered on: February 26, 2024

+ CRL.M.C. 1193/2024

RAM NIWAS DHURIYA

..... Petitioner

Through: Ms.Rebecca John, Sr.Advocate with
Ms.Neha Rathi, Mr.Azad Khokher,
Mr.Kayal Giri, Mr.Kamal Kishore and
Mr.Pravir Singh, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Through: Mr.Ripu Daman Bhardwaj, SPP, CBI
with Mr.Kushagra Kumar,
Mr.Abhinav Bhardwaj and
Ms.K.Manaswini, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India has been preferred on behalf of the petitioner for setting aside order dated 06.12.2023 passed by learned Special Judge (PC Act) (CBI)-18, Rouse Avenue District Courts, New Delhi whereby witness (Shri K.G. Sathyasingan) has been allowed to be examined through video conferencing.

2. Petitioner, who is one of the accused before the learned Trial Court moved an application under Section 138 of Indian Evidence Act, 1872 on 15.03.2023 that witness Shri K.G. Sathyasingan be examined by directing his

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physical presence and not through video conferencing, since the witness is to be confronted with several documents during cross-examination which may not be feasible on examination of the witness through video conferencing.

3. Considering that the case was being protracted and is one of the oldest pending matters before the learned Trial Court, the witness was contacted telephonically by the learned Trial Judge through Reader on his own, who informed that he is no more a citizen of India and is residing in Australia. Witness further apprised that he was 79 years old, suffering from number of ailments, due to which he is unable to travel long distance for physical appearance as a witness. Learned Trial Court also noticed that CBI had not moved any formal application for conducting the evidence of remaining witnesses through video conferencing. In the aforesaid background, learned Trial Court vide impugned order dated 06.12.2023 considered the issue, “whether the witness Shri K.G. Sathyasingan (Sanctioning Authority) is/isn’t to be examined as witness through video conferencing”.

4. Learned Trial Court vide impugned order dismissed the application under Section 138 of the Indian Evidence Act filed by the petitioner, taking into account that petitioner is not a public servant and testimony of witness is relevant *qua* public servant D.S. Rawat (Accused No.1 before the learned Trial Court). Further, referring to Video Conferencing Rules as notified vide Notification No.348/Rules/DHC dated 26.10.2021, directions were issued for recording of evidence of witness Shri K.G. Sathyasingan through video conferencing on 28.02.2024.

5. Learned counsel for the petitioner submits that petitioner is facing trial along with other co-accused in the aforesaid RC, wherein allegations have been leveled that accused entered into criminal conspiracy to cheat Punjab



National Bank Housing Finance Ltd. (PNBHFL) and cause pecuniary loss to the bank. Accused D.S. Rawat (public servant) is stated to be the then Branch Incharge, PNBHFL. It is vehemently urged that the sanction had been allegedly accorded by Shri K.G. Sathyasingan (witness), relying upon material documents filed along with charge-sheet and the petitioner has a right to put up the documents relied upon by the prosecution, to the witness during cross-examination. It is contended that the learned Trial Court while passing the impugned order ignored **Rule 5.3.11 of the Video Conferencing Rules notified by the High Court of Delhi on 26.10.2021**, which mandates that the learned Judge shall obtain the consent of all the accused, prior to passing the order for recording the evidence through video conferencing. It is pointed out that in terms of provisions of Video Conferencing Rules, 2021, a formal application in the prescribed format is to be filed after obtaining consent of the accused before examination of any witness through video conferencing. The course adopted by the learned Trial Court is stated to be contrary to Rules since no such consent was obtained from all the accused and the concerns of the petitioner as stated in application under Section 138 Indian Evidence Act, 1872 were not addressed. Reliance is placed upon ***Vinod Kumar and Another. v. State (NCT of Delhi) and Another, 2023 SCC OnLine Del 8287*** and order dated 06.04.2020 passed by the Hon'ble Supreme Court in ***Suo Motu Writ (Civil) No.5 of 2020*** wherein it was observed that evidence shall be recorded with consent of both the parties. Further, relying upon ***T G Veeraprasad and Others v. Sri Prakash Gandhi and Others, Writ Petition No.8283 of 2022 (GM-CPC)*** decided by High Court of Karnataka at Bengaluru on 01.07.2022, it is also submitted that the Court has to be cautious when an adversal party is objecting to recording of



cross-examination through video conferencing and the same cannot be justified for mere asking by the litigant, as the demeanour of witness is of great value. It is contended that merely because it may be inconvenient for a witness to attend the trial, it cannot be directed that witness may be examined through video conferencing, if it denies opportunity of effective cross-examination. It is also pointed out that the bank officials themselves were at fault and the documents were observed to be forged and fabricated vide order dated 13.05.2010, in the suits preferred on behalf of the bank. No evidence is stated to have been brought on record to establish the involvement of the petitioner in the alleged fraud. It is also submitted that documents from the bank may also be required for purpose of confronting the witness during cross-examination.

6. On the other hand, the order passed by the learned Trial Court has been supported by learned SPP for CBI and it is submitted that to avoid the delay in trial, the witness has been rightly permitted to be examined through video conferencing.

7. I have given considered thought to the contentions raised.

On the face of record, examination of Shri K.G. Sathyasingan (witness) is imperative in order to prove the 'sanction order' accorded for prosecution of accused D.S. Rawat. However, at the same time, it has been pointed out by learned counsel for the petitioner that the witness also needs to be cross-examined on behalf of petitioner/co-accused since allegations of conspiracy have been leveled against all the accused and Shri K.G. Sathyasingan accorded the sanction after considering the charge-sheet along with voluminous bank record.



Considering the facts and circumstances, it may be preposterous at this stage to conclude that right of cross-examination of co-accused can be foreclosed only on the ground that the witness had accorded sanction only in respect of accused D.S. Rawat. The learned Trial Court is required to appropriately look into the concerns of the petitioner/co-accused in this regard and ensure that they are able to effectively exercise their rights of cross-examination and put up the relevant documents to the witness, if required, during cross-examination.

8. It may also be relevant to refer and reproduce Rule 5.3.11 of Video Conferencing Rules dated 26.10.2021, which have been issued to consolidate, unify and streamline the procedure relating to the use of video conferencing for the Courts and facilitate video conferencing at different stages of judicial proceedings:

“5.3.11 Notwithstanding the provisions of Clause 5.3.1, where witness examination is to take place in a criminal case of a person located outside the country, the provisions of the “Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs) / Mutual Legal Assistance (MLA) Request and Service of Summons / Notices/ Judicial documents in respect of Criminal Matters” (available at http://164.100.117.97/WriteReadData/userfiles/ISII_ComprehensiveGuidelinesMutualLegalAssistance_17122019.pdf) will be followed to the extent they comport with the provisions of the Cr.P.C. and the Evidence Act. Furthermore, before the Court employs its discretion to carry out witness examination via video conference, it will obtain the consent of the accused.”

9. A bare perusal of Rule 5.3.11 reflects that before a Court employs its discretion to carry out witness examination by video conferencing, it will obtain the consent of the accused. The very purpose of obtaining the consent of accused is to address their concerns and ensure that the right of cross-examination is effectively exercised and they are not prejudiced in any



manner. The access to documents relied upon by the prosecution to the witness at the time of examination/cross-examination needs to be ensured. While passing the impugned order, the learned Trial Court inadvertently appears to have ignored the provision of seeking consent of all the accused in terms of Rule 5.3.11 as well as to take into consideration their concerns for confronting the witness with documents relied in the charge-sheet without any handicap, for effective cross-examination.

10. In the facts and circumstances, the matter is remanded back to the learned Trial Court to consider the issue afresh after taking into consideration the consent of all the accused and concerns, if any, before directing recording of evidence of Shri K.G. Sathyasingan through video conferencing. The Court shall also ensure that the witness is able to have access to the documents/official records relied by prosecution with which the accused intend to confront during cross-examination.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this judgment be forwarded to the learned Trial Court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

FEBRUARY 26, 2024/sd