



CRM-M-45513-2023

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

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CRM-M-45513-2023 (O&M)
Date of decision: 01.04.2026

ANITA GUPTA

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Bhavesh Aggarwal, Advocate, for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. The present petition under Section 482 Cr.P.C., has been filed for quashing the order dated 19.08.2023, Annexure P-7, whereby evidence of the prosecution has been closed by order.

2. Learned counsel prays for one opportunity to get the cross-examination of the complainant-petitioner conducted through video conferencing, as she, aged 57 years, suffers from a serious heart ailment with a functional capacity of 20% and is also undergoing treatment for cancer, for which reference is made to the medical report, Annexure P-5, however vide the impugned order, the prosecution evidence was closed, which was stayed by this Court, vide order dated 14.09.2023.

3. Heard.



4. Hon'ble the Supreme Court in its landmark judgment of **State of Maharashtra vs. Praful B. Desai**, (2003) 4 SCC 601 has dealt *in extenso* with the issue with regard to recording of evidence through video conferencing mode, relevant paras whereof read thus:

“20. Recording of evidence by video-conferencing also satisfies the object of providing, in Section 273, that evidence be recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if the witness was actually sitting before them. In fact the accused may be able to see the witness better than he may have been able to if he was sitting in the dock in a crowded courtroom. They can observe his or her demeanour. In fact the facility to playback would enable better observation of demeanour. They can hear and rehear the deposition of the witness. The accused would be able to instruct his pleader immediately and thus cross-examination of the witness is as effective, if not better. The facility of playback would give an added advantage whilst cross-examining the witness. The witness can be confronted with documents or other material or statement in the same manner as if he/she was in court. All these objects would be fully met when evidence is recorded by video-conferencing. Thus no prejudice, of whatsoever nature, is caused to the accused. Of course, as set out hereinafter, evidence by video-conferencing has to be on some conditions.

21. Reliance was then placed on Sections 274 and 275 of the Criminal Procedure Code which require that evidence be taken down in writing by the Magistrate himself or by his dictation in open court. It was submitted that video-conferencing would have to take place in the studio of VSNL. It was submitted that this would violate the right of the accused to have the evidence recorded by the Magistrate or under his dictation in open court. The advancement of science and technology is such that now it is possible to set up video-conferencing equipment in the court itself. In that case evidence would be recorded by the Magistrate or under his dictation in open court. If that is done then the requirements of these sections would be fully met. To this method there is, however, a drawback. As the witness is now in court there may be difficulties if he commits contempt of court or perjures himself and it is immediately noticed that he has perjured himself. Therefore as a matter of prudence, evidence by video-conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable.”



5. In **Vinod Kumar vs. State (NCT of Delhi)**, 2023 SCC OnLine Del 8287, the issue was regarding the examination and cross-examination of witness/victim, through physical presence, the Delhi High Court observed and held thus:

“C. Judicial Precedents Qua Recording of Evidence of Witnesses Through Video-Conferencing

33. At this juncture, this Court deems it apposite to analyse as to whether the statutory law and judicial precedents of the Hon’ble Apex Court allow a victim of sexual assault, who is a foreign citizen for the purpose of recording evidence through video-conferencing in a criminal trial.

34. An examination of the legal framework in this regard reveals that this issue was considered, at length, by the Hon’ble Apex Court in case of State of Maharashtra v. Dr. Praful B. Desai 2003 4 SCC 601. The broad propositions laid down by the Hon’ble Apex Court were as under:

a) Recording of evidence via video-conferencing satisfies the object of Section 273 of Cr.P.C., that the evidence must be recorded in the presence of the accused, and no prejudice is caused to the accused.

b) In video-conferencing, both the victim and the accused are in the presence of each other, and except for touching, one can see, hear and observe as if the party is in the same room.

c) Demeanour of a witness can be clearly observed when the witness testifies through video-conferencing.

d) Since the equipment used in facilitating video-conferencing can be set up in the Court room, the judge can record the evidence himself or through dictation in open court room.

e) If the equipment cannot be set up in court, provisions of Sections 284 to 289 of Cr.P.C. can be resorted to, and commissions can be issued for examination of witnesses.

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D. Embracing the Technology while Balancing the Rights of Accused and Victim in a Criminal Trial

37. In view of the preceding discussion, it stands adequately clarified that the fundamental law regarding open court hearings and the presence of the witness, has been modified by judicial precedents, as discussed, and with the consequent adoption of vulnerable witness schemes, which are being followed in the entire country. This Court also notes that these



schemes also provide an option for the examination of vulnerable witnesses, including witnesses of sexual assault, by means of technology, rather than recording their evidence in person.

38. There can be no denying that the technology in today's world is so advanced that the testimony of a witness can be recorded by electronic means and the same can be easily accomplished without compromising with the fundamental principles of criminal law and justice.

39. The use of video-conferencing facility, in lieu of physical appearance, for recording of testimony of a victim of sexual assault has been allowed by the Hon'ble Apex Court, in cases as discussed above, and the same is rather one of the procedures laid down in the cases involving vulnerable witnesses, as per the '*Guidelines For Recording Of Evidence Of Vulnerable Witnesses In Courtrooms*' issued by this Court.

40. There is history and purpose of use of vulnerable witnesses rooms and recording their testimony through such different procedures, instead of a physical face-to-face confrontation of the victim and the accused, at the time of trial.

41. This Court is of the view that the facility of video-conferencing through which the testimony of the prosecutrix can be allowed to be recorded, in the present case also, is not a one way facility of videoconferencing, but a two-way video-conferencing facility, which includes the element of participation of the accused, the victim, the learned prosecutor, learned defence counsel and the learned Trial Court Judge and following all the principles of criminal justice system, such as:

(a) administrating of rule to the witness;

(b) recording of testimony of the witness in the presence of the learned Judge of Trial Court, the learned defence counsel and the learned APP for the State, who all will be able to see the witness;

(c) cross-examination of the witness by the learned defence counsel.

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E. Evidence via Video-Conferencing viz.-a-viz Recording of Demeanour of Witness

42. One of the concerns raised in this petition, is that whether the learned Trial Court will be able to make assessment of the credibility of the witness if the witness/prosecutrix is allowed to testify through video-conferencing, since the judge will not be able to assess the demeanour of the witness. As far as this contention is concerned, this Court is of the opinion that the physical demeanour of the witness cannot be the sole criteria or determinative of the credibility of the witness. However, at the same time, the demeanour of the witness will also be visible to



the judge as when evidence is being recorded through video-conferencing, as also in cases where testimony of the witnesses is recorded in vulnerable witness rooms. The witness will be visible to the learned Trial Court, learned Prosecutor and learned defence counsel on the screen.

43. Even the 'High Court of Delhi Rules for Video Conferencing for Courts 2021' take into consideration the importance of noting demeanour, and in Rule 8.6, provides as under:

“8. Examination of persons

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

44. As also held by the Hon'ble Apex Court in case of Dr. Praful B. Desai (supra), in cases where evidence is recorded via videoconferencing, the accused may be able to see the witness better than he would have in the courtroom and would also enable better observation of demeanour.

45. This Court is also of the opinion that the learned Trial Court's ability to assess and appreciate the evidence of the witness will be as per law and the facts of the case, and it will not be affected negatively by the fact of prosecutrix testifying through video-conferencing. If the witness is allowed to appear on a large monitor, the learned Trial Judge, the defence counsel as well as the learned prosecutor and accused will be able to see the witness while she will be testifying and will be cross-examined. The test of credibility, reliability and quality of her evidence will, therefore, depend on the testimony i.e. the examination-in-chief and the cross-examination by the learned defence counsel, and other factors which have to be taken into account while adjudicating a criminal case.”

(emphasis supplied)

6. Moreover, Hon'ble the Supreme Court in **Guidelines for Court Functioning through Videoconferencing during Covid-19 Pandemic**, In re, while finding the judicial recognition of the use of technology in precedent of **Praful B. Desai** (supra) held that the term “evidence” includes electronic evidence and that videoconferencing may be used to record the same. It observed that developments in technology have opened up the possibility of virtual courts which are similar to physical courts.



7. This Court has framed 'Rules for Video Conferencing for Courts', as notified on 10.12.2021 and laid down the procedure for Video Conferencing to ensure a seamless process.

8. The petitioner being incapacitated to physically present herself cannot be lost sight of, while it is a duty cast upon the Court to arrive at the truth, one of the means for which is the proper and complete examination of the witnesses, including cross-examination, it no doubt being essential for the just decision of the case.

9. In view of the above, the impugned order is set aside. The present petition stands allowed, subject to costs of Rs.5,000/- to be deposited with Punjab State Legal Services Authority. The complainant-petitioner is granted only one effective opportunity to get herself cross-examined.

10. Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the instant petition.

11. Pending application(s), if any, shall also stand disposed of accordingly.

01.04.2026
parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No