

LPA No.125 of 2021 (O&M)

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.125 of 2021 (O&M)
(in CWP No.20480 of 2020)

Date of decision: 09.03.2021

Ami Ranjan and another

...Appellants

Vs.

State of Haryana and another

...Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. Navniti Prasad Singh, Senior Advocate,
with Mr. Nitin Kant Setia, Advocate,
for the appellants.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

Ritu Bahri, J. (oral)

The present Letters Patent Appeal has been filed against the judgment dated 14.12.2020 passed by the learned Single Judge of this Court, whereby writ petition i.e. CWP No.20480 of 2020, filed by the petitioner-appellants seeking quashing of the order/letter dated 11.09.2020 (Annexure P-12) issued by the Deputy Collector-cum-Marriage Officer, Gurugram, has been dismissed and it has been held that there is no provision for registration of the marriage under the Special Marriage Act, 1954 (hereinafter referred to as 'the Act') without parties appearing in person before the marriage officer.

Brief facts of the case are that petitioner-appellant No.1 (Ami Ranjan) was working as IT Consultant at Publicist Sapien in London (United Kingdom) since 2017. Petitioner-appellant No.2 (Misha Verma) is

LPA No.125 of 2021 (O&M)

-2-

USA citizen of Indian origin and has been living in USA. She is employed at Virginia University School of Medicine as Resident Doctor. The appellants solemnized marriage on 07.12.2019 according to Hindu rites and ceremonies in the presence of their respective families at Gurugram (Haryana). After marriage, both of them returned back to their respective work places in United Kingdom and United States on 10.12.2019 and 15.12.2019 respectively. An application for registration of their marriage was filed before the Deputy Commissioner-cum-Marriage Officer, Gurugram on 29.01.2020. A request was made to the Marriage Officer to permit appellant-petitioner No.2 to appear through video conference for the purpose of moving the application for registration of marriage. The Marriage Officer called the appellants to appear before him on 03.04.2020. In the meantime, due to spread of COVID-19 Pandemic, the appellants could not return India. Even, the Government of India had imposed a nation wide lock-down on 24.03.2020. Due to this reason, appellant No.1 made an application dated 07.08.2020 to the Marriage Officer with a request that the second motion hearing may also be conducted through video conference. This request was rejected vide letter/order dated 11.09.2020 (Annexure P-12).

It was pleaded that appellant No.2 is a medical professional and she has been put on COVID-19 emergency duty in United States. Appellant No.1 can go to USA to meet his wife, but for that purpose he has to attach a marriage certificate along with an application for obtaining VISA. In this backdrop, on account of lack of marriage certificate, parties are facing unprecedented hardship.

Before the learned Single Judge, counsel for the petitioners

LPA No.125 of 2021 (O&M)

-3-

(appellants) had referred to a judgment passed by the Kerala High Court in Pardeep Kodiveedu Cletus vs. Local Registrar of Marriages, 2018 (1) KLT 292 and another judgment of Delhi High Court in Charanjit Kaur Negi vs. Govt. of NCT Delhi, 2007 (42) RCR (Civil) 222 on the proposition that the parties can be asked to be present before the Embassy/Consulate of India in United States and United Kingdom to authenticate their identity. Thereafter, identity of the appellants can be verified through the Government authorities in the respective countries. By doing so, there would be sufficient compliance of Sections 15 and 16 of the Act and their marriages can be registered by the Marriage Officer by conducting virtual hearing.

Learned Single Judge, while dismissing the petition, has held that as per the provisions of aforesaid Act, procedure prescribed for registration of the marriage requires that parties should be present in person along with two witnesses. A new procedure qua appearance of parties for the satisfaction of the Marriage Officer, as well as, qua maintenance of the public record called the Marriage Certificate Book, under Section 47 of the Act, cannot be followed. The process of video conference, at best, can be resorted to during the intermediary process of the inquiry to be conducted by the Marriage Officer. The Marriage Officer, in the present case, had accommodated the parties at the initial stage and had permitted appellant No.1 to be present before him through video conference at the stage of first motion and moving of the application. Thereafter, for the registration of marriage, parties have to be present in person as per the provisions of the aforesaid Act. There the parties have to sign the Marriage Certificate Book in the presence of witnesses. The Marriage Certificate Book cannot be signed by a party through a distant mode. Signing the certificate book cannot be

LPA No.125 of 2021 (O&M)

-4-

interpreted to mean pasting of authenticated sign of a party on that book. It was further observed that the Marriage Certificate Book is a public document, which is being maintained at a particular office of a District Marriage Officer. This procedure has to be followed. The integrity and authenticity of the Marriage Certificate Book cannot be altered.

Learned counsel for the appellants has referred to a judgment passed by the Division Bench of High Court of Jharkhand in Upasana Bali and another vs. State of Jharkhand and others, (2013) 1 AIR Jhar R 741, wherein the husband was citizen of Sweden and the wife was residing in Australia. They both were residing at London (United Kingdom) and their marriage was solemnized in Ranchi (Jharkhand). They were having a small baby boy of eight (08) months. Their son's passport could not be issued without the marriage certificate of petitioners. The petitioners could not come to India leaving their eight months' old son alone at London. The Division Bench allowed the writ petition by holding that application for registration of marriage under the Jharkhand Hindu Marriage Registration Rules, 2002, can be made through their power of attorney holder and the Registering Authority was to satisfy himself about the marriage of the petitioners through video-conferencing. It was observed that presence of the parties could be secured through video conference in specific cases, where such procedure requires because of the peculiar facts of such cases. While allowing the petition, reference was made to a judgment passed by Hon'ble the Supreme Court in State of Maharashtra vs. Dr. Praful B. Desai, 2003 (4) SCC 601.

Mr. Hitesh Pandit, Additional A.G., Haryana, has vehemently argued that as per Sections 15, 16, 18 and 47 of the Special Marriage Act,

LPA No.125 of 2021 (O&M)

-5-

1954, an application for registration of marriage has to be signed by both the parties and thereafter, the Marriage Officer has to give public notice. After satisfying that all the conditions of Section 15 are fulfilled, the Marriage Officer has to enter certificate of marriage in the Marriage Certificate Book. All the procedure has to be carried out in the presence of Marriage Officer, so as to make it authentic document. As per the Act, signatures of both the parties have to be there in the application for registration of the marriage and only thereafter, enquiry as per Section 16 of the Act starts. Hence, merely because the appellants are working in foreign countries and their working conditions or their personal compulsions render it difficult to be present before the Marriage Officer cannot be made a ground to overlook the provisions of law. Their presence and signatures in the Marriage Certificate Book are mandatory. Learned State counsel further argued that only for the intermediary process, the video conference can be conducted. The Marriage Officer had accommodated the parties at the initial stage by permitting petitioner-appellant No.1 to be present before him through video conference at the time of first motion and moving of the application for registration of marriage. At the final stage, for signing the Marriage Certificate Book, their presence is mandatory and hence, the appeal is liable to be dismissed. Learned State counsel has referred to the judgment passed by the Division Bench of Kerala High Court in **Deepak Krishan and another vs. District Registrar, Ernakulam and others**, 2007 AIR (Kerala) 257 on the proposition that Sections 15 and 16 of the Special Marriage Act, 1954 are mandatory in nature. The District Marriage Officer cannot proceed to register the marriage by reducing the period of 30 days as contemplated under Sections 15 and 16 of the Act. He has further referred to

LPA No.125 of 2021 (O&M)

-6-

the judgment passed by the Kerala High Court in Sarala Baby vs. State of Kerala, 2010 (24) RCR (Civil) 43, wherein while considering Rule 11 of the Kerala Registration of Marriages (Commom) Rules, 2008, it was held that personal appearance of the spouses is mandatory for registration of the marriage. If registration of marriage is permitted without personal appearance, then this facility can be greatly abused.

Heard, learned counsel for the parties.

In Deepak Krishan's case (supra), the parties were seeking reduction of the period of 30 days, which was required as per Section 15 of the Act after the Registrar had sent a notice of 30 days inviting objections to the marriage. It was held that provisions of Section 15 of the Act are mandatory and this period cannot be reduced.

But, this is not the prayer in the present case. In the facts of the present case, the appellants are not seeking reduction of 30 days' time as per Section 15 of the Act when objections were invited after filing of the application for registration of marriage. However, with respect to the provision of 30 days' period, as contemplated under Section 15 of the Act, the Division Bench held that this provision was not **mandatory** but **directory**. Hence, non compliance of this provision would not render the application for registration of marriage against the provisions of Section 15 of the Act. This judgment is not applicable to the facts of the present case. In Sarlala Baby's case (supra), prayer made for registration of the marriage was that presence of the parties should be totally exempted before the Marriage Officer. Even, this judgment will not be applicable, as in the present case parties are not seeking exemption from appearance, rather their prayer is that appearance of appellant No.2-wife should be accepted through

LPA No.125 of 2021 (O&M)

-7-

video conference as she is in USA and is unable to visit India on account of the prevailing COVID-19 situation.

The Kerala High Court in Pardeep Kodiveedu Cletus's case (supra) was examining a case of appearance of parties through video conference. The Marriage of the parties had taken place in the year 2000 and one of the petitioners was in Ireland since 2001. Eventually, in the year 2016, they started residing in USA on the strength of L-1 and L-2 Visas. In order to apply for permanent resident status in USA, they needed to provide their marriage certificate issued by the competent authority in their country. Therefore, they made an application through power of attorney holder (father of one of the petitioners) for registration of their marriage. In this backdrop, they were called by the Local Registrar of Marriages (Common) to appear before him in order to put their signatures in the Register of Marriages maintained under the Rules. It was observed that after filing of the application, the Local Registrar was to verify the entries in the memorandum of their accuracy and completeness and enter the particulars thereof forthwith in the Register of Marriages maintained by him. The said rule provides that the parties to the marriage should be present before the Registrar. As per Rule 11 of the Kerala Registration of Marriages (Common) Rules, 2008, parties were to appear in person before the Registrar, atleast, once prior to the registration of marriage. The learned Single Judge, while referring to the decision of Hon'ble the Supreme Court in State of Maharashtra vs. Dr. Praful B. Desai, 2003 (4) SCC 601, held that the provisions contained in Rule 11 can be interpreted as enabling the Local Registrar to obtain personal appearance through video conferencing as well. The writ petition was allowed and direction was given to the

LPA No.125 of 2021 (O&M)

-8-

respondents to seek presence of the parties through video conferencing on the application made by the power of attorney holder of the petitioners and the latter (power of attorney holder) could sign in the Marriage Register on behalf of the petitioners.

Recently, the High Court of Kerala in Karthika Salinkumar vs. Secretary Chempu Grama Panchayath and others, 2021 SCC Online Ker 202, had allowed a writ petition, where the husband of petitioner was unable to come to India due to COVID-19 restrictions and gave a direction for registration of the marriage of petitioner by securing presence of her husband through video conferencing and thereafter, issue marriage certificate to the petitioner, after obtaining the signatures of the petitioner and the authorized representative of her husband. The Delhi High Court in Charanjit Kaur Negi's case (supra) has examined the case of registration of marriage, where petitioner's husband was living outside India. While allowing the writ petition, it was observed that compelling the husband of petitioner to appear simultaneously with her for the purpose of registration of marriage would entail expense besides loss of time. The certificate has to be given on the basis of an application given to the Registrar that the parties were married on a particular date. Now, the developments have changed the world and it is possible for a person living thousands of kilometers away from Delhi or anywhere in India to simultaneously communicate with another party. The technology has enabled the parties to attest documents digitally and ensure digitally secure transmission through internet. The objective and philosophy underlying Information Technology Act is based on these developments. In this backdrop, registration of marriage of spouses separated by distance has to be addressed keeping in view the changing

LPA No.125 of 2021 (O&M)

-9-

times. It is open to evolve a suitable mechanism with a mix of technology by incorporating video-conferencing, authentication of identities by Embassies, and attestation of signatures in a similar manner. In para 16 of the aforesaid judgment, following directions were given:

“16. In view of the above since the petitioner's husband is now in the United States and requiring him to return India in order to appear before the Registrar would entail expense besides loss of time, the matter can be appropriately dealt with by suitable directions. Accordingly, it is directed:

(1) The petitioner shall fill Form 'A' and present it to the second respondent along with Form A duly signed by her husband. The husband's signatures shall be attested by the Counsel General available in the nearest town in the United States along with description of his passport. His affidavit, attested by the Counsel General, and attested copy of his photograph, too shall be furnished to the second respondent.

(2) An attested copy of the petitioner's passport and that of her husband shall be filed along with the 'Form A'. Likewise, copies of the birth certificate evidencing the petitioner's son's birth, issued by the MCD and such other documents evidencing her date of birth and place of residence shall also be produced by her.

(3) The petitioner shall produce witnesses in accordance with Rule 3. One witness, with a PAN Card and/or copy of ration card/passport as the case may be shall be present along with the petitioner. The said witness shall verify about his having witnessed the marriage between the petitioner and Shri Jaspal Singh. The petitioner shall also produce other documentary evidence such as photographs, invitation card, etc.

(4) On being satisfied that all the above requirements are fulfilled the second respondent shall issue an order and make the necessary entries in Form B.

(5) Upon completion of the process indicated above the respondent No. 2 shall ensure that two certificates in the prescribed form are issued to the petitioner and her husband.”

As per the above said judgment, the identify of the parties can be verified through video conference and certificate of marriage can be issued to them.

LPA No.125 of 2021 (O&M)

-10-

Learned Single Judge, from the stage of making the application, has accepted the process of video conferencing. Hence, for the purpose of carrying out the procedure, as contemplated under Sections 15 and 16 of the Act, application for registration of marriage can be accepted by the Marriage Officer through video conference. However, the next question would be, whether certificate of marriage in the Marriage Certificate Book, as prescribed in 5th Schedule, has to be signed by both the parties to the marriage along with three witnesses and whether this process can be done by video conference?

For reference, relevant Sections 15, 16, 18 and 47 of the Special Marriage Act, 1954, are reproduced as under:-

“15. Registration of marriages celebrated in other forms.- Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:

- (a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since
- (b) neither party has at the time of registration more than one spouse living;
- (c) neither party is an idiot or a lunatic at the time of registration:
- (d) the parties have completed the age of twenty-one year at the time of registration;
- (e) the parties are not within the degrees of prohibited relationship: Provided that in case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and
- (f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

16. Procedure for registration.- Upon receipt of an application signed by

both the parties to the marriage for the registration of their marriage under this chapter, the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in Sec. 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the Form specified in the Fifth Schedule and such certificate shall be signed by the parties to the marriage and by three witnesses.

18. Effect of registration of marriage under this Chapter.-

Subject to the provisions contained in sub-section (2) of Sec.24 where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents:

Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.

47. Marriage Certificate Book to be open to inspection--(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

THE FIFTH SCHEDULE (See section 16) CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS I, E.F., hereby certify that A.B. and CD.* appeared before me thisday of..... 20 and that each of them, in my presence and in the presence of three witnesses who have signed hereunder have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this day of 20..... been registered under this Act, having effect as from.”

LPA No.125 of 2021 (O&M)

-12-

Issue with regard to registration of marriage through video conference came up for consideration before the Division Bench of the High Court of Jharkhand in Upasana Bali's case (supra), wherein it was held that under the Jharkhand Hindu Marriage Registration Rules, 2002, an application for registration of marriage can be presented by duly authorized power of attorney of the parties, authorized jointly or separately, coupled with satisfaction of the registering authority through video-conferencing from the persons who are seeking registration of their marriage. The Division Bench was considering a case, where the husband was Swedish and the wife was Australian and both were Hindu. Wife's parents were residents of Ranchi (Jharkhand) and the petitioners (therein) marriage was solemnized in the city of Ranchi in the State of Jharkhand. They were having a small boy of only eight months and they were unitary family, consisting of the husband, wife and small kid. They were residing at London in United Kingdom. The sons's passport could not be issued without marriage certificate of the petitioners and the petitioners could not come to India, leaving behind their 08 (eight) months old child at London. The Division Bench while referring to the judgment passed by Hon'ble the Supreme Court in Dr. Praful B. Desai's case (supra), allowed the petitioner and gave direction to the Registering Officer to accept the application for registration of marriage of the petitioners through their power of attorney holder Smt. Nandini Gupta wife of Shri Dilip Kumar Gupta and after satisfying himself about the marriage of the petitioners through video-conferencing, pass a final order for issuance of marriage registration certificate within 10 days. In the aforesaid case, Hon'ble the Supreme Court was examining the procedure of recording the evidence by way of video

LPA No.125 of 2021 (O&M)

-13-

conferencing. In that case, the witness was living in USA and was not willing to come India. But, he was willing to give evidence by way of video conferencing. In para Nos.11, 12 and 19, Hon'ble the Supreme Court observed as under:-

“11. This argument found favour with the High Court. The High Court has relied on judgments of various High Courts which have held that Section 273 is mandatory and that evidence must be recorded in the presence of the accused. To this extent, no fault can be found with the judgment of the High Court. The High Court has then considered what Courts in foreign countries, including Courts in USA, have done. The High Court then based its decision on the meaning of the term “presence” in various dictionaries and held that the term “presence” in Section 273 means actual physical presence in Court. We are unable to agree with this. We have to consider whether evidence can be led by way of video-conferencing on the provisions of the Criminal Procedure Code and the Indian Evidence Act. Therefore, what view has been taken by Courts in other countries is irrelevant. However, it may only be mentioned that the Supreme Court of USA, in the case of **Maryland v. Santra Sun Craig (497 of 836)**, has held that recording of evidence by video-conferencing was not a violation of the Sixth Amendment (Confrontation Clause).

12. Considering the question on the basis of Criminal Procedure Code, we are of the view that the High Court has failed to read Section 273 properly. One does not have to consider dictionary meanings when a plain reading of the provision brings out what was intended. Section 273 reads as follows:

"Section 273: Evidence to be taken in presence of accused. Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.

Explanation : In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

Thus Section 273 provides for dispensation from personal attendance. In such cases evidence can be recorded in the presence of the pleader. The presence of the pleader is thus deemed to be presence of the Accused. Thus Section 273 contemplates constructive presence. This shows that actual physical presence is not a must. This indicates that the term

"presence", as used in this Section, is not used in the sense of actual physical presence. A plain reading of [Section 273](#) does not support the restrictive meaning sought to be placed by the Respondent on the word "presence". One must also take note of the definition of the term 'Evidence' as defined in the [Indian Evidence Act, Section 3](#) of the Indian Evidence Act reads as follows:

"Evidence----Evidence means and includes-----

(1)all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence (2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence"

Thus evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video- conferencing.

19. At this stage we must deal with a submission made by Mr Sundaram. It was submitted that video-conferencing could not be allowed as the rights of an accused, under [Article 21](#) of the Constitution of India, cannot be subjected to a procedure involving "virtual reality". Such an argument displays ignorance of the concept of virtual reality and also of video conferencing. Virtual reality is a state where one is made to feel, hear or imagine what does not really exists. In virtual reality one can be made to feel cold when one is sitting in a hot room, one can be made to hear the sound of ocean when one is sitting in the mountains, one can be made to imagine that he is taking part in a Grand Prix race whilst one is relaxing on one sofa etc. Video conferencing has nothing to do with virtual reality. Advances in science and technology have now, so to say, shrunk the world. They now enable one to see and hear events, taking place far away, as they are actually taking place. To take an example today one does not need to go to South Africa to watch World Cup matches. One can watch the game, live as it is going on, on one's TV. If a person is sitting in the stadium and watching the match, the match is being played in his sight/presence and he/she is in the presence of the players. When a person is sitting in his drawing-room and watching the match on TV, it cannot be said that he is in presence of the players but at the same time, in a broad sense, it can be said that the match is being played in his presence. Both, the person sitting in the stadium and the person in the drawing-room, are watching what is actually happening as it is happening. This is not virtual reality, it is actual reality. One is actually

seeing and hearing what is happening. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. In fact he/she is present before you on a screen. Except for touching, one can see, hear and observe as if the party is in the same room. In video conferencing both parties are in presence of each other. The submissions of Respondents counsel are akin to an argument that a person seeing through binoculars or telescope is not actually seeing what is happening. It is akin to submitting that a person seen through binoculars or telescope is not in the "presence" of the person observing. Thus it is clear that so long as the Accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is being recorded in the "presence" of the accused and would thus fully meet the requirements of [Section 273, Criminal Procedure Code](#). Recording of such evidence would be as per "procedure established by law".

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 Court room. They can observe his or her demeanour. In fact the facility to play back 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 play back 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.

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 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.”

Hon'ble the Supreme Court further observed that a witness can be examined on commissions under Section 284 and 285 Cr.P.C. and normally a commission would involve recording evidence at the place where the witness is. However advancement in science and technology has now made it possible to record such evidence by way of video conferencing in the town/city where the Court is. Thus in cases where the attendance of a witness cannot be procured without an amount of delay, expense or inconvenience the Court could consider issuing a commission to record the evidence by way of video conferencing. As per Section 3 of the Indian Evidence Act, evidence can be both oral and documentary and electronic records can be produced as evidence. Hence, evidence, even in criminal matters, can also be by way of electronic records and this would include video conferencing. In the aforesaid judgment, Hon'ble the Supreme Court had issued directions validating video conferencing at different levels, modalities to be followed in use of video conferencing. The Presiding Officer of the Court was given powers in maintaining sufficient distance while recording evidence and to restrict entry of persons in his/her Court and points from where arguments could be addressed.

The Kerala High Court in **Pardeep Kodiveedu Cletus vs. Local Registrar of Marriages (Common)**, 2018 (1) ILR (Kerala) 377, while

LPA No.125 of 2021 (O&M)

-17-

examining a case of registration of marriage under the Kerala Registration of Marriages (Common) Rules, 2008, held that personal appearance of the parties to the marriage can be dispensed with by the Local Registrar. It was further observed that the Local Registrar is empowered to obtain their personal appearance through video conferencing. In para 9 of the judgment, it was observed as under:-

9. True, inconvenience caused by a rule can never be a ground for annulling the same or reading down the Rule in a different fashion. But, if the purpose of the rule could be ensured otherwise, should the parties be put to inconvenience? My conclusion is that if the purpose of the rule can be ensured otherwise, the provision of law can be interpreted by courts in a fashion not causing any inconvenience to the parties. I am fortified in this view by the principle quod est inconveniens, aut contra rationem non permissum est in lege (that which is inconvenient, or against reason, is not permitted in law). I am also fortified in this view by the following observation in the commentaries on 'Statutory Interpretation' by Francis Bennion:

"The court seeks to avoid a construction that causes unjustifiable inconvenience to persons who are subject to the enactment, since this is unlikely to have been intended by Parliament. Sometimes however there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong."

I do not find any overriding reason in this matter for the court to interpret the provision contained in Rule 11 in such a fashion compelling the parties to the marriage to be physically present before the local Marriage Officer, for the purpose of registering their marriage."

The ratio of judgment passed in **Dr. Praful B. Desai's** case (supra) is that statement of a witness or accused can be recorded by way of video conference in the presence of his pleader/counsel under Section 273 Cr.P.C. This view was taken keeping in view that under Sections 284 and 285 of the Cr.P.C., attendance of the witness can be exempted by appointing a Commission, who can go to the place where the witness or accused is

LPA No.125 of 2021 (O&M)

-18-

present and record his statement to meet the ends of justice. Hence, for all intents and purposes, under the criminal law, presence of the witness is not necessary before the Court for recording of his evidence. In the same manner, for the purpose of issuing the marriage registration certificate, as held by the High Court of Jharkhand in Upasana Bali's case (supra), parties to the marriage can appear before the Registering Officer through video conference.

Appellant No.1-husband, in the present case, is not seeking complete exemption of appearance of his wife-appellant No.2 (who is working in USA) before the Registrar of Marriage. He is seeking that his wife should be allowed to appear through video conferencing, so that the marriage can be registered. Appellant No.2-Misha Verma, wife of appellant No.1, was employed in Virginia University School of Medicine as Resident Doctor. Now, she is working in J.W. Ruby Memorial Hospital at 1 Medical Center Drive, Morgantown, West Virginia 26505, United States. The appellants solemnized marriage on 07.12.2019 according to Hindu rites and ceremonies in the presence of their respective families at Gurugram (Haryana). In this case, presence of Misha Verma can be secured through video conferencing and presence of husband-Ami Ranjan and three witnesses can be marked by their appearance in the office of Registrar of Marriages. Then, the certificate of marriage can be issued on doing verification of facts as contemplated under Sections 15 and 16 of the Special Marriage Act. Once, the marriage certificate is issued, it can be made part of the public record under Section 47 of the Act by entering it into the Marriage Certificate Book. There shall be no violation of Section 47 of the Act. The entire process can be done after seeking presence of

LPA No.125 of 2021 (O&M)

-19-

Misha Verma wife of appellant No.1-Ami Ranjan through video conferencing. For all intents and purposes, this would be a valid marriage certificate.

In view of the above discussion, this appeal is allowed and the impugned judgment dated 14.12.2020 along with order/letter dated 11.09.2020 (Annexure P-12) issued by the Deputy Collector-cum-Marriage Officer, Gurugram is set aside. Following directions are given:-

(i) Since the Marriage Officer had permitted appellant No.1-Ami Ranjan to file the application through video conference at the stage of first motion, he can now proceed to register the marriage after 30 days as per Section 16 of the Special Marriage Act, 1954.

(ii) Presence of appellant No.2-Misha Verma can be secured through video conferencing and she can appear before J.W. Ruby Memorial Hospital, at 1 Medical Center Drive, Morgantown, West Virginia 26505, United States at an appropriate date and time fixed in consultation with both Deputy Commissioner-cum-Marriage Officer and J.W. Ruby Memorial Hospital or the Indian Consulate/High Commission at 2107 Massachusetts Ave NW, Washington, DC 20008, United States.

(iii) Three witnesses namely, (i) Vishwa Vijay Ranjan Prasad son of late Dineshwar Prasad (father of appellant No.1), (ii) Sh. Vibhav Bhusan son of Kul Bhushan (cousin brother of appellant No.1) or in the alternative Sh. Kumar Sambhava son of M.N. Prasad (Maternal Uncle of appellant No.1) and

LPA No.125 of 2021 (O&M)

-20-

(iii) Sh. Vinay Gopal son of Madan Gopal Prasad (Maternal Uncle of appellant No.2-wife), can appear physically before the Registrar of Marriages/Marriage Officer. All the witnesses can produce their PAN cards/copies of ration cards/passports, as the case may be and shall appear along with appellant No.1-husband, before the Marriage Officer on the date of registration of marriage. The said witnesses shall verify with regard to their attendance in the marriage of the appellants. Appellant No.1 shall also produce other documentary evidence such as photographs, invitation cards etc. before the Registrar of Marriages/Marriage Officer.

(iv) On being satisfied that all the above requirements are fulfilled, Deputy Collector-cum-Marriage Officer, Gurugram/respondent No.2 will issue an order; make the necessary entries and issue the marriage certificate in the prescribed form to appellant No.1 (Ami Ranjan) and his wife appellant No.2-Misha Verma.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

09.03.2021
ajp

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