



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 489 of 2022
Reserved on: 07.12.2022
Decided on: 13.01.2023

Court on its own motion

.....Petitioner

Versus

State of H.P. and another

.....Respondents

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioner:

**Mr. Manohar Lal Sharma,
Advocate, as Amicus Curiae.**

For the respondents:

**Mr. Desh Raj Thakur, Additional
Advocate General with Mr.
Narender Thakur, Deputy
Advocate General, for
respondent No.1/State.**

Satyen Vaidya, Judge.

The Registry of this Court received a written request dated 20.4.2022 from learned Additional District and Sessions Judge, Chamba, District Chamba, H.P. seeking permission to visit the place of accused to conduct

¹Whether the reporters of Local Papers may be allowed to see the judgment? Yes.

trial in case No. 27 of 2017 (Sessions Trial) titled as State of H.P. vs. Naresh Kumar, pending before the said Court.

It was submitted that the accused Naresh Kumar was bedridden as a known case of “fracture C-5 with quadriplegia” leading to permanent loss of function. He was not able to move from one place to another, although, his memory and speech was normal.

2. The above noted request was ordered to be treated on judicial side and, as such, the instant matter came for adjudication before this Court.

3. Keeping in view the nature of the matter, Sh. Manohar Lal Sharma, Advocate, was appointed as Amicus Curiae. The record of the case (Sessions Trial) No. 27 of 2017 pending before the learned Additional Sessions Judge, Chamba was also requisitioned.

4. It is revealed from the record that learned Judicial Magistrate 1st Class, District Chamba, H.P. took cognizance of offence under Section 304-AA IPC against accused Naresh Kumar and passed committal order.

5. The gist of allegation against the accused is that on 09.12.2015 while driving vehicle (Tata-Sumo) bearing

registration No. HP-02-0185 he caused the accident, as a result of which, the vehicle fell into a deep gorge. The other occupant of the vehicle namely Sh. Joginder Singh died on the spot, as a result of injuries suffered in the accident. The accused is alleged to be driving the vehicle at the time of accident under intoxication. 'Ethyl Alcohol' is stated to be present in the blood sample of the accused.

6. The accused himself suffered 100% disability on account of injuries suffered by him in the accident. A copy of disability certificate issued by a Medical Board in respect of the accused is on record, which reveals his diagnosis as "fracture C-5 resulting in quadriplegia". His disability has been assessed at 100% in relation to whole body. The disability of the accused is also stated to be permanent.

7. With the disability suffered by the accused, he is stated to be not able to move and is further stated to be permanently bedridden. Due to the physical condition, accused is not able to personally appeared in the Court to face the trial. The matter was repeatedly adjourned for

presence of the accused, but for the reasons noted above, his presence could not be procured by the Court.

8. In the above background, the following order came to be passed by learned Additional Sessions Judge, Chamba on 17.01.2022:

“Present: Sh. Uday Singh, Ld. PP for the State.

Accused is not present.

Case file taken up today for proper order.

The record shows that in this case, accused is not coming to the Court as he is reported to be bed-ridden. His medical condition is not good and keeping in view such medical condition of accused, an order dated 14.7.2021 was passed by my ld. Predecessor and in the last paragraph, he observed as follows:-

“Keeping in view the report of the Doctor and attending facts and circumstances of the case, accused is not in a position to move as such, request be made to the Hon’ble High Court to guide the further course of action to be conducted in the matter or to permit this Court to visit the place of accused to conduct trial in the matter as the case is pending since long for want of presence of accused and consideration on charge”.

Thus, my ld. Predecessor has observed that in view of the report of the Doctor, accused is not in a position to move and ordered to submit the request

to Hon'ble High Court to guide the further course of action in the matter or to permit the Court to visit the place of accused to conduct trial in the matter. Since such order has been passed by my ld. Predecessor, therefore, let reference be submitted to the Hon'ble High Court through proper channel, in terms of order dated 14.7.2021 as passed by my ld. Predecessor. Let matter be listed for 02.03.2022 for awaiting orders from the Hon'ble High Court."

9. The reference made by learned Additional Sessions Judge, Chamba appears to have been sent to this Court without adverting to the provisions as contained in Section 9 of the Code of Criminal Procedure, which reads as under:

“9. Court of Session. (1) *The State Government shall establish a Court of Session for every sessions division.*

(2) *Every Court of Session shall be presided over by a Judge, to be appointed by the High Court.*

(3) *The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.*

(4) *The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such place or places in the other division as the High Court may direct.*

(5) Where the office of the Sessions Judge is vacant, the High Court may make arrangements for the disposal of any urgent application which is, or may be, made or pending before such Court of Session by an Additional or Assistant Sessions Judge, or, if there be no Additional or Assistant Sessions Judge, by a Chief Judicial Magistrate, in the sessions division; and every such Judge or Magistrate shall have jurisdiction to deal with any such application.

(6) The Court of Session shall ordinarily hold its sitting at such place or places as the High Court may, by notification, specify; but, if, in any particular case, the Court of Session is of opinion that it will tend to the general convenience of the parties and witnesses to hold its sittings at any other place in the sessions division, it may, with the consent of the prosecution and the accused, sit at that place for the disposal of the case or the examination of any witness or witnesses therein.

Explanation..- For the purposes of this Code, "appointment" does not include the first appointment, posting or promotion of a person by the Government to any Service, or post in connection with the affairs of the Union or of a State, where under any law, such appointment, posting or promotion is required to be made by Government."

10. The learned Additional Sessions Judge exercises the jurisdiction vested in the Court of Session.

As per sub section (6) of Section 9 quoted above, a Court

of Session is authorized to hold its sittings at any place in the Sessions Division other than the place specified by the High Court by notification, in case, the Court of Session is of opinion that it will tend to the general convenience of the parties and the witnesses. Additionally, the requirement is that the Court of Session will hold such sitting with the consent of the prosecution and the accused.

11. Thus, the learned Additional Sessions Judge, Chamba failed to exercise jurisdiction vested in him and instead made a reference to this Court.

12. Further it will be relevant to notice that though, Section 273 of the Code of Criminal Procedure, provides for all evidence to be taken, in the course of the trial or other proceeding, in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader, yet, such provision has been made subject to exception provided in the Code.

13. Section 317 of the Code of Criminal Procedure reads as under:

“317. Provision for inquiries and trial being held in the absence of accused in certain cases.-

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.”

14. Considering cumulative effect of Sections 273 and 317 of the Code, it cannot be said as an absolute rule that in no case the evidence in a trial or inquiry before criminal Court can be recorded in absence of the accused.

15. It also cannot be ignored that the recording of evidence through video conferencing is permissible subject to fulfillment of certain conditions. In appropriate cases, such mode can also be made available.

16. In light of above discussion, the instant petition is disposed of with direction to the learned Additional Sessions Judge, Chamba to proceed with the trial of the Case (Sessions Trial) No. 27 of 2017, titled "State of H.P. vs. Naresh Kumar" in terms of observation made hereinabove. Since the trial is already delayed, it is expected from the learned Additional Sessions Judge, Chamba that the same will be concluded as expeditiously as possible. Keeping in view the peculiar circumstances of the case, the Deputy Commissioner, Chamba is directed to provide all assistance to the learned Additional Sessions Judge, Chamba for the purpose of holding of proceedings of above noted case through video conferencing, if required.

17. Pending miscellaneous application(s), if any, also stands disposed of accordingly.

18. Records be sent back forthwith with a copy of this order to the Court of learned Additional Sessions Judge, Chamba, for compliance.

13th January, 2023
(GR)

(Satyen Vaidya)
Judge