

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

CRM-M-49763-2022 (O&M)

Date of Decision:26.10.2022

Navjot Singh Sidhu

.....Petitioner

Versus

Balwinder Singh Sekhon and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. M.S. Khaira, Senior Advocate
with Mr. Jaswinder Singh, Advocate
for the petitioner.

Mr. Aman Dhir, D.A.G., Punjab.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for quashing an order dated 15.10.2022 (Annexure P-6) passed by learned Chief Judicial Magistrate, Ludhiana, whereby application of the petitioner, filed at the stage of adducing pre-summoning preliminary evidence, to record his statement as a complainant's witness by way of Video Conferencing in a defamation complaint dated 24.05.2021, bearing number COMI-300-2021, titled *Balwinder Singh Sekhon vs. Bharat Bhushan Ashu*, has been dismissed.

2. Petitioner, a former President of Punjab Pradesh Congress Committee and an Ex. Minister of Tourism and Cultural Affairs and Ex. Local Bodies Minister of the State of Punjab, is presently confined in Central Jail, Patiala. He is undergoing sentence upon conviction in compliance of

the order of the Supreme Court in case FIR No.224 dated 27.12.1988 registered under Section 304 read with Section 34 IPC, at P.S. Kotwali, Patiala.

3. Succinct factual matrix first.

3.1. Plead case is that in a defamation complaint filed by Sh. Balwinder Singh Sekhon (respondent No.1 herein) against Bharat Bhushan Ashu, the name of the petitioner has been given by the complainant as his witness. *Apropos*, he has been summoned as complainant's witness by the Chief Judicial Magistrate, Ludhiana. Per complainant, due to loss of original record, the petitioner is to prove the copies of official record of Local Bodies, Department of Punjab Government. The said record allegedly pertains to the period during which the petitioner was Local Bodies Minister in Punjab Government. Pertinently, petitioner has been summoned as a witness by the Chief Judicial Magistrate, Ludhiana for recording the pre-summoning preliminary evidence, to determine whether the complaint case is fit for trial so as to issue summons to the accused or not.

3.2. Petitioner on receipt of the summons of the trial Court filed an application praying that his examination may be done through video conference *inter alia* on the ground that he is under Z+ security cover and is also currently confined in jail. However, the said application of the petitioner was rejected by the learned Chief Judicial Magistrate vide order dated 18.08.2022 (Annexure P-3). Aggrieved, petitioner filed a revision petition but the same too was dismissed by the learned Sessions Judge vide order dated 19.09.2022 (Annexure P-4). Petitioner then approached this Court

CRM-M-49763-2022 (O&M)

under Section 482 of the Cr.P.C. by way of CRM (M) No.45138 of 2022 assailing the order passed by the Court below.

3.3. During the pendency of the proceedings before this Court, petitioner was advised to file another application before the trial court, this time by invoking Rule 6 of Punjab and Haryana High Court Rules for Video Conferencing for Courts which were notified post pandemic on 10.12.2021. Application filed under High Court Video Conference Rules was also dismissed vide impugned order dated 15.10.2022 (Annexure P-6).

3.4. After passing of the impugned order dated 15.10.2022 by learned CJM, a coordinate bench of this Court ordered (Annexure P/7) that the earlier pending CRM (M) No.45138 of 2022 filed before this court by the petitioner was rendered infructuous and granted him liberty to assail fresh order dated 15.10.2022 passed by learned CJM in accordance with law. Hence, the present petition.

4. On advance service, Mr. Aman Dhir, learned Deputy Advocate General appears for the State of Punjab (respondent no.2). Given the nature of order being passed, there is no necessity to serve/seek any return by the respondent no.1, as no further proceedings and/or pleadings are required.

5. On a Court query, it transpires that no cross-examination is required to be conducted upon the petitioner, who is to appear as a witness in preliminaries, before consideration by the Court whether or not to summon the accused. It is prior to the stage of summoning the accused that the petitioner has been served with the summons. The learned Senior Counsel would strenuously argue that only a formal statement has to be made by the petitioner in respect of the duties which he discharged at the relevant time, as

the Minister of Local Bodies Department of Punjab Government. That apart, it is the conceded position, as is borne out from the office letter dated 20.05.2022 (Annexure P-2) issued by the Additional Director General of Police, Punjab that the petitioner has been provided Z+ security, which is the highest level of protection provided at the expense of the State exchequer. Naturally, the movement of the petitioner from jail to the Court would, therefore, cause a huge loss of the State exchequer and it would also cause inconvenience to the general public in the Court premises, inasmuch, as not only the prior sanitisation of the entire Court premises would be required but in certain areas movement to be cordoned would cause hurdle in the public movement for the duration the petitioner will have to remain in Court campus.

6. Furthermore, I am of the opinion that envisaging such situations, in exercise of powers under Articles 225 & 227 of the Constitution of India, the High Court of Punjab and Haryana has already framed “Rules for Video Conferencing for Courts” and in particular, Rules 6, 8.3, 8.4 & 8.15 thereof may be referred which for ready reference is extracted herein below:-

“6. Application for Appearance, Evidence and Submission by Video Conferencing:

6.1. Any party to the proceeding or witness, save and except where proceedings are initiated at the instance of the Court, may move a request for video conferencing. A party or witness seeking a video conferencing proceeding shall do so by making a request in the form prescribed in Schedule II.

6.2. Any proposal to move a request to for video conferencing should first bediscussed with the other party or parties to the proceeding, except where it isnot possible or inappropriate, for example in cases such as urgentapplications.

6.3. *On receipt of such a request and upon hearing all concerned persons, the Court will pass an appropriate order after ascertaining that the application is not filed with an intention to impede a fair trial or to delay the proceedings.*

6.4. *While allowing a request for video conferencing, the court may also fix the schedule for convening the video conferencing.*

6.5. *In case the video conferencing event is convened for making oral submissions, the order may require the Advocate or party in person to submit written arguments and precedents, if any, in advance on the official email ID of the concerned court.*

6.6. *Costs, if directed to be paid, shall be deposited within the prescribed time, commencing from the date on which the order convening proceedings through video conferencing is received.”*

8. Examination of persons:

xxxx xxxx xxxx

8.3 *Where the person being examined, or the accused to be tried, is in custody, the statement or, as the case may be, the testimony, may be recorded through video conferencing. The Court shall provide adequate opportunity to the under-trial prisoner to consult in privacy with their counsel before, during and after the video conferencing.*

8.4 *Subject to the provisions for examination of witnesses contained in the Evidence Act, before the examination of the witness, the documents, if any, sought to be relied upon shall be transmitted by the applicant to the witness, so that the witness acquires familiarity with the said documents. The applicant will file an acknowledgment with the Court in this behalf.*

xxxx xxxx xxxx

8.15 *Where a Required Person is not capable of reaching the Court Point or the Remote Point due to sickness or physical infirmity, or presence of the required person cannot be secured without undue delay or expense, the Court may authorize the conduct of video conferencing from the place at which such person is located. In such circumstances the Court may direct the use of portable video conferencing systems. Authority in this behalf may be given to the concerned Coordinator and/or any person deemed fit by the Court.*

xxxx xxxx xxxx”

A reading of the above Rules reveals that the object thereof is to facilitate and speed up disposal of matters in the Courts.

7. Having already noted the facts of the case herein above, I see no reason why in terms of the Rules *ibid* the petitioner be not allowed and accorded the benefit of recording his statement by way of video conferencing. Learned trial Court fell in grave error while declining the request of petitioner, inasmuch as, though Rule 6 *ibid* was specifically cited by learned counsel for the petitioner before the Court below, however, the same has not even been dealt at all, what to say of not having been dealt in right perspective. Rule 6 read with 8 have both been given complete short shrift by the trial court.

8. Learned trial Court, perhaps got unduly swayed by the part of the observations made in a judgement titled **T.G. Veeraprasad and others Vs. Sri Prakash Gandhi, Writ Petition No.8283 of 2022 (GM-CPC) decided on 1st July, 2022**, rendered by learned brother Sachin Shankar Magadam, J. whereby speaking for Karnataka High Court it has been *inter alia* held that primarily, video conferencing is a matter of and in relation to comprehensive civil suits, where complex issues are involved and should be cautiously resorted to while recording of the evidence. In fact, careful reading of paragraphs 17 and 18 thereof reproduced below would reflect otherwise than what has been held by the learned trial Court in the order under challenge :-

“17. In the preceding paragraph this Court has taken note of the necessity of video conferencing in a given case. Recording

evidence by video conferencing speeds up disposal of matters in the Court. Several litigations where ocular evidence of public servants, doctors, Bank Managers, Medical experts, handwriting experts, scientific experts, finger print experts is required to be recorded, the proceedings are stalled on account of inability to secure the above said witnesses. Therefore, in such cases the Court should exercise discretion and enable the litigants to avail the technology and Court should record evidence of such witnesses. If the evidence of expert witnesses is recorded through video conferencing, it would be easier for the Officials and public servants to assist the Court without expending time and at the same time, their participation in the Court proceedings through video conferencing will not hinder their official duty. Video Conferencing should also be encouraged in matrimonial cases.

18. But, when it comes to comprehensive civil suits, where complex issues are involved, the Court should be cautious in allowing a party to lead evidence through video conferencing. Mere delay, expense or inconvenience cannot be a ground to allow a litigant to have an alternate mode of leading ocular evidence. The discretion should be better left to the trial Court where the litigations are pending for consideration. The present petitioner after lapse of 10 years has filed an application seeking rejection of plaint. It is only after rejection of the plaint, the petitioner who has never appeared before the Court has come up with this application, which is not supported by an affidavit, but is accompanied by the memorandum of facts of the counsel on record. Therefore, the present petitioner-defendant has clearly demonstrated that his object is to prevent a fair trial. He is not merely purporting to invoke his right of access to the Court, but the material on record clearly indicates that his real object is not to have a fair trial at all. If the Court wish to avoid bringing the administration of justice into disrupt, in my view the Court should be slow in make decisions favoring those who set out to use the Court process to their advantage. In conclusion, this Court is of the view that the Court was justified in being reluctant to entertain the relief sought in the application as it clearly appeared to the trial Court that the petitioner is determined to subvert the adjudicative process by adopting dilatory tactics. The Court has rightly examined the petitioner's conduct with reference to the overall interest of justice and has declined to exercise the discretion in favour of the petitioner and the same does not warrant interference under Article 227 of the Constitution of India.”

9. I am in respectful agreement with the views expressed as aforesaid, to the effect that normally the recording of evidence by video

conferencing speeds up disposal of matters in the Courts. The Rules framed by this Court for recording of evidence of witnesses through video-conferencing are also intended to facilitate and speed up disposal of matters in the Courts.

10. Facts of the present case do not seem to justify refusal to record evidence of the petitioner through video-conferencing. Instant is a case which is at the pre-summoning stage of recording preliminary evidence and no cross-examination of the petitioner is required.

11. Furthermore, concededly the petitioner is under Z+ security cover and the same shall have to be provided to him during his movement from Patiala to Ludhiana where the trial court is situated and return to Patiala. Trial court fell in grave error to observe that “*so what, security cover can be provided by the State.*” However, it remained oblivious as to why should public exchequer be burdened by asking the State to bear the expense of complainant’s witness in a totally private dispute qua alleged defamation of the complainant at the hands of another person against whom the private complaint has been filed. Pertinently, the petitioner is not even an opposite party or arrayed as an accused in the complaint. There is nothing to show that the application of the petitioner has been filed with an intention to impede a fair trial or to delay the proceedings or that it is actuated by any *mala fide* intention in seeking his examination through video-conferencing.

12. In the context of bearing expenses of complainant’s witness reference may be had to the following provisions of Cr.P.C :-

“204. Issue of process:

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87

312. Expenses of complaints and witnesses:

Subject to any rules made by the State Government, any Criminal Court may, if it thinks fit, order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.”

12.1. Section 204(4) of the Code *ibid* clearly stipulates that when by any law for the time being in force, any process fee or other fee are payable, no process shall be issued until the fees are paid, and if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

12.2. Section 312 of the Code *supra* retained in amended Cr.P.C. was earlier numbered as Section 544 of the unamended Cr.P.C, under which

relevant Rules have been framed in Volume III Chapter 9 by this Court.

Relevant part of the High Court Rules and Orders, Volume III, Chapter 9, is as under:

“CHAPTER 9

Witnesses—Criminal Courts

PART-A - EXPENSES

(a) Rules made by the Punjab Government under the powers conferred by Section 544 of the Code of Criminal Procedure, 1898, regulating the payment of subsistence and travelling allowance to witnesses attending trials, etc., in Subordinate Courts.

RULES

1. The Criminal Courts are authorised to pay at the rates, specified below; the expenses of complainants or witnesses—

(1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service, (2) in all cases entered in column 5 of Schedule II appended to the Code of Criminal Procedure, as not bailable, (3) in all cases which are cognizable by the Police, and (4) of witnesses in all cases in which they are compelled by the Magistrate, of his own motion, to attend under section 540 of the Code of Criminal Procedure.

2. No payment shall be made by Government to witnesses summoned at the instance of the complainant under section 244 of the Code of Criminal Procedure, unless the prosecution appear to the Magistrate to be in furtherance of the interests of public justice, but under this section the Magistrate may require the complainant to pay their expenses.”

12.3. Perusal of the above reflects that the State is not under any obligation like the present case to bear the expenses of the witnesses of the complainant but it is the complainant, who has to bear the same.

13. There is nothing on record to suggest or even borne out from the order under challenge that the complainant made any such offer of bearing

the huge cost of Z+ security cover of the petitioner for his movement from Patiala to Ludhiana for recording his evidence and return to Patiala. It would be pertinent to mention here that after amendment of the Cr.P.C., draft Rules under Section 312 Cr.P.C. on the same line as the earlier Rules framed under repealed Section 544 Cr.P.C. have also been framed but the same has not been formally approved as yet by the Full Bench of this Court. In the interregnum, the earlier framed Rules is continued to operate.

14. As a result of the above discussion, the petition is allowed and the impugned order dated 15.10.2022 (Annexure P-6) passed by the learned Chief Judicial Magistrate, Ludhiana is set aside. However, it is made clear that this order should not be cited as a precedent to insist upon video conferencing even at the time of cross-examination and the same is left open to the discretion of the court below, to be exercised at appropriate time.

**(ARUN MONGA)
JUDGE**

October 26, 2022
ashish

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No