



2024 : DHC : 3690



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 07.05.2024

(61)+ CRL.M.C. 2353/2022 & CRL.M.A. 9954/2022
(62)+ CRL.M.C. 2354/2022 & CRL.M.A. 9956/2022
(63)+ CRL.M.C. 2356/2022 & CRL.M.A. 9960/2022
(64)+ CRL.M.C. 2358/2022 & CRL.M.A. 9963/2022

AMIT CHOUDHRY Petitioner
Through: Mr.Manu Sharma, Mr.Arjun
Kakkar, Advs.
versus

KAVANDEEP SINGH SAMPURAN Respondent
Through: Ms.Rebecca John, Sr. Adv.
with Mr.Sarim Naved,
Mr.Pravir Singh, Mr.Harsh
Kumar, Mr.Saurabh Sagar,
Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C. '), challenging the order dated 06.04.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Metropolitan Magistrate-NI Act-05, (West-District), Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case Nos.1145, 1146, 2761, 2759 of 2017, all titled as *Amit Choudhry v. Kawandeep Singh Sampuran*, accepting the withdrawal of the consent by the respondent for conduct of the cross-examination of the petitioner / complainant through the



virtual conferencing mode (in short, 'VC').

Factual Background

2. The above complaint cases have been filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (in short, 'NI Act') by the petitioner against the respondent. The petitioner is a resident of Dubai, while the respondent is a resident of United Kingdom. The above complaints have been pending adjudication since the year 2017.

3. During the pendency of the above complaint cases, in the year 2021, the petitioner filed an application seeking for his cross-examination to be recorded through VC, *inter alia* stating therein as under:

"2. That the Applicant herein / Complainant is currently residing in Dubai and had come to Delhi for the purpose of filing and leading evidence in the present case.

3. That the Accused is in the habit of making false complaints against the Complainant. The Accused had made a false complaint before the Economic Offence Wing, Delhi Police which was registered as FIR No. 133 of 2018. The Accused using his influence had opened a LOC in the said case against the Complainant. The Complainant while coming from Dubai was detained at the Immigration in the International Airport at Delhi on 18th July 2018 in this regard. However, during the investigation it was established that the case was completely false. The LOC against the Complainant was accordingly cancelled. The Police authorities had also filed a Closure Report dated 10.05.2019.

4. That the Accused in order to seek vengeance



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petitioner was thereafter, duly cross-examined through VC on 17.12.2022. It is stated that the cross-examination was carried out for more than three hours.

5. The respondent, thereafter, filed an application on 16.03.2022 seeking withdrawal of his consent to the cross-examination to be conducted in a virtual mode. In the application, it was stated that the consent was given due to the ongoing Covid-19 pandemic and the restricted functioning of the Court. It was further stated that since the restriction imposed on the functioning of the Court has been lifted, and the flights are regularly operating, there is no justification for the petitioner to not appear before the Court physically for his cross-examination.

6. This said application has been allowed by the learned Trial Court by the Impugned Order.

Submissions of the learned counsel for the petitioner

7. The learned counsel for the petitioner submits that the petitioner is a permanent resident of Dubai. There is no reason as to why he should be made to come to India for the purpose of his cross-examination, when the same can be easily conducted through the virtual mode and, in fact, there is no allegation by the respondent regarding any difficulty being faced by him in the cross-examination of the petitioner through VC.

8. Placing reliance on the judgments of this Court in ***CBI v. Abhishek Verma***, 2023 SCC OnLine Del 724; ***Atul Jain v. Central Bureau of Investigation***, 2017 SCC OnLine Del 7002; and, ***Vinod***



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emphasized that the offence under Section 138 of the NI Act is primarily in the nature of a civil wrong and proceedings primarily compensatory in nature. It was held that summary procedure should normally be followed except where exercise of power under second proviso to Section 143 of the Act is considered necessary. Use of modern technology was recommended not only for paperless courts but also to reduce overcrowding of courts. The need to consider categories of cases which can be partly or entirely concluded “online” without physical presence of the parties was recommended.

18. It was in the above background that in the “Guidelines”, detail procedure has also been laid down for recording the evidence of the parties/witnesses through VC.

19. There is absolutely no reason as to why the facility which is available with the Courts should not be used to its full potential.

20. Regarding the submission of the learned senior counsel for the respondent that the petitioner is to be confronted with voluminous number of documents, the same can also be easily done through the mode of VC. There are technologies which are present and are in use regularly in this Court and also by the District Courts in this regard.

21. It appears that the presence of the petitioner in the present case is merely being sought to satisfy the ego of the parties, which cannot be allowed.

22. Only because the restrictions due to the Covid-19 pandemic have been lifted, the same cannot be a justification for the consent which was earlier given by the respondent, based whereon detailed cross-examination of the petitioner was conducted on 17.02.2022, to



be allowed to be withdrawn.

23. The reliance of the learned senior counsel for the respondent on Section 256 of the Cr.P.C. is also ill-founded. The complainant/petitioner is duly represented by his counsel before the learned Trial Court. Even otherwise, the virtual presence of the complainant/petitioner in the facts of the present case, would also suffice for purposes of compliance with Section 256 of the Cr.P.C.

24. In *Abhishek Verma* (supra), this Court, exercising its power of relaxing the Video Conferencing Rules, in a case involving offence under the Prevention of Corruption Act, 1988, had allowed the witness to be examined virtually, while observing as under:

“27. It is also true that the Rule 5.3.11 of the Video Conferencing Rules by the High Court of Delhi, New Delhi provides that consent of the accused be obtained before the examination of a witness via video conference. However, this court is conferred with the power to relax the requirements of any rule vide Rule 18 of Video Conferencing Rules by the High Court of Delhi, New Delhi. Rule 18 of Video Conferencing Rules No. 325/Rules/DHC dated 1.6.2020 reads as under:-

“18. Power to Relax

The High Court may if satisfied that the operation of any Rule is causing undue hardship, by order dispense with or relax the requirements of that Rule to such extent and subject to such conditions, as may be stipulated to deal with the case in a just and equitable manner.”

25. In *Vinod Kumar* (supra), this Court again exercised its power under Rule 18, by not allowing the accused to withdraw its earlier

