



2024 : DHC : 3690



\$~61 to 64

\* **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 18<sup>th</sup> 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*



*has also made a false complaint in Dubai (wherein the Complainant resides for work). This Complaint was filed sometime in November 2018. The Applicant was not aware of the same. The Applicant had to travel abroad, and he was again detained in Abu Dhabi Airport in 31<sup>st</sup> March 2019. This was again a false complaint and after investigation the concerned police authorities again rejected his complaint.*

*5. The Complainant states and submits that again recently the Accused has filed another Complaint in Dubai against the Complainant. The Applicant has been informed and is advised that he will be detained in the Airport and not allow to come to India,*

*6. That the Complainant had also caught the Covid-19 virus last year and has therefore been advised not to travel to India where the Corona cases are on the rise again. In these circumstances, it is unlikely that the Complainant would be able to travel to India for the purposes of leading his evidence before this Hon' ble Court in the near future.*

*7. That the evidence of complainant Amit Chaudhary who is party to the case is very material. Therefore, his evidence is required to be recorded. However, on account of the abovementioned circumstances, the Accused has made it difficult for the complainant to travel to Delhi. Thus, it is requested to permit the cross examination to be conducted through the video conference in presence of the counsel of the Complainant and Accused as per proviso to Section 275(1) of CrPC.”*

4. The respondent fairly acceded to the above request, and by an order dated 09.10.2021, the learned Trial Court allowed the cross-examination of the petitioner to be conducted through VC. The



2024 : DHC : 3690



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***



*Kumar & Anr v. State (NCT of Delhi) & Anr.*, Neutral Citation: 2023:DHC:9328, he submits that similar prayers have been granted by this Court keeping in view the advancement of the technology and the power of relaxation given to the Court from the adherence to the rule.

9. He also placed reliance on the “*Digital NI Act Courts in Delhi: Project Implementations Guidelines, 2020*” (hereinafter referred to as the “Guidelines”) to submit that, in fact, Digital NI Act Courts have been established and a detailed procedure for conduct of the proceedings before such Courts, including recording of the evidence, has been laid down in the Guidelines. He submits that there is no reason as to why the same be not followed in the present case.

**Submissions of the learned senior counsel for the respondent**

10. On the other hand, the learned senior counsel for the respondent submits that though the respondent is a resident of United Kingdom, he has been regularly coming to India for attending the Complaint Cases filed by the petitioner. She submits that there is no reason as to why the petitioner should not come to India to attend these complaint cases, which, according to her, have been filed with *mala fide* intent.

11. Placing reliance on Section 256 of the Cr.P.C., she submits that as of general rule, the complainant must appear in person before the learned Trial Court, and on failure thereof, the learned Magistrate would, in fact, acquit the accused. It is only on the valid reasons to be recorded, that the personal attendance of the complainant can be dispensed with.

12. Learned senior counsel for the respondent submits that in the



present case, the respondent has to confront the petitioner with large number of documents, which cannot be effectively done through VC.

13. She submits that the complainant is conducting a luxurious litigation as it is evident from the fact that since the year 2018, he has not appeared before the learned Trial Court even once.

14. She submits that the cross-examination of the petitioner shall be completed within 2/3 appearances of the petitioner and, therefore, the same can also be fixed on the date of the choice of the petitioner. She submits that in this manner, the petitioner shall not suffer any inconvenience.

### **Analysis and Conclusion**

15. I have considered the submissions made by the learned counsels for the parties.

16. The havoc of the Covid-19 pandemic has compelled us to make a shift towards digitalization and use its full potential for the purposes of Court hearing. This Court, recognizing the said potential, has brought about the hybrid mode of hearing in all Courts, including the District Courts. It has also framed “High Court of Delhi Rules for Video Conferencing for Courts 2021”, which *inter alia* gives a detailed procedure and manner for recording evidence through VC.

17. This Court has also established Digital NI Act Courts for the conduct of the cases under Section 138 of the NI Act. In the “*Judicial Directives*” referred to in the Guidelines, reference was made to the judgment of the Supreme Court in *M/s Meters and Instruments v. Kanchan Mehta*, (2018) 1 SCC 560, wherein the Supreme Court



2024 : DHC : 3690



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





consent for recording of the evidence by virtual mode, and observed as under:

*“18. Therefore, in light of such facts and circumstances, the learned Trial Court did not commit any error while observing that the counsels for accused persons had never objected to the Court issuing summons to the prosecutrix for her to appear either physically or virtually and even depose via video-conferencing, for which exhaustive directions were issued from time to time.*

*19. However, having observed so, this Court even otherwise takes note of Rule 18 of the “High Court of Delhi Rules for Video Conferencing for Courts 2021”, which provides 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.”*

*20. Rule 18, thus, grants this Court, the discretion to relax or dispense with the requirements of any specific rule, when it is clear that strict application of such a rule will cause undue hardship, or may lead to injustice or create an unwarranted burden on the parties involved. The key intent behind incorporation of Rule 18, as it appears, is to provide a mechanism to act as a safeguard against the adverse consequences that may arise due to the inflexible application of rules.”*

26. The above are the cases where the State had a stake, however, in the present cases, as noted hereinabove, the proceedings are under



2024 : DHC : 3690



138 of the NI Act which are more civil in nature. The above procedure is, therefore, to be followed even in the present case and consent of the respondent as earlier given, should not be permitted to be withdrawn.

27. The learned Trial Court has therefore committed an error of jurisdiction in passing of the Impugned Order and allowing the respondent to withdraw his consent for the evidence to be recorded in a virtual mode.

28. The Impugned Order, therefore, cannot be sustained and is hereby set aside. It is directed that the further examination of the petitioner/complainant shall be conducted through VC, following the Guidelines that have been issued by this Court for the said purpose.

29. It is, however, made clear that during the recording of the cross-examination of the petitioner/complainant, if the learned Trial Court, for any cogent reasons deems it appropriate to direct the physical presence of the petitioner/complainant, it shall be free to so direct, and the present order shall, in no manner, act as an impediment to such direction being passed.

30. The petitions are disposed of in the above terms. Pending applications are also disposed of.

31. There shall be no order as to costs.

**NAVIN CHAWLA, J**

**MAY 7, 2024/Arya/SS**

*[Click here to check corrigendum, if any](#)*