

(2013) 08 P&H CK 0768

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM No. 18934 of 2013 in MRC No. 8 of 2007

State of Punjab

APPELLANT

Vs

Mohinder Singh

RESPONDENT

Date of Decision: Aug. 21, 2013

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151
- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (2013) 4 PLR 728 : (2013) 4 RCR(Civil) 423

Hon'ble Judges: Hemant Gupta, J; Fateh Deep Singh, J

Bench: Division Bench

Advocate: H.S. Brar, A.A.G., Punjab and Ms. Aashima Mor, for the U.T. Chandigarh, for the Appellant; Shubhra Singh, D.A.G., Haryana, for the Respondent

Final Decision: Disposed Off

Judgement

Hemant Gupta, J.

A Division Bench of this Court, while deciding Murder Reference No. 8 of 2007 titled "State of Punjab Vs. Mohinder Singh", noticing spelling mistakes in the medical evidence given by the Doctors, gave the following directions:

In view of the aforesaid, in order to ensure that medical evidence is placed on Court records in correct and clear terms and also that Presiding Officers of Courts do not take it lightly, we direct the Registrar (Judicial) to issue instructions to Secretaries (Health) and Director General/Directors (Health Services), and Presiding Officers of Courts in Punjab, Haryana and U.T. Chandigarh, that at the time of recording of evidence of Doctors, who are produced as expert witnesses, Courts shall ask them (Medical Doctors etc.) to submit medical reports on affidavit in clear terms with correct spelling.

In pursuance of above directions, the Registrar (Rules) has issued a communication dated 28.08.2008 to the effect that requisite affidavits are required to be prepared by the Doctors, who appear as expert witnesses, as the original records always remain with them, which they can use/refer to, while preparing their affidavits.

2. In a meeting of the Monitoring Committee of this Court with the Officers of Punjab and Chandigarh on 16.04.2012 and with the Officers of Haryana on 17.04.2012 consisting of the Chief Secretary and the Home Secretary of the respective States, it was decided that medical evidence shall be recorded through "Video Conferencing". At that stage, it was pointed out that the Doctors faced difficulties in tendering their evidence on affidavits.

3. Thereafter, vide note dated 24.04.2012, it was suggested by one of us (Hemant Gupta, J.) that the directions issued by the Division Bench earlier on 30.05.2008 are required to be reconsidered by a Bench on judicial side. It is, in pursuance of such note, the matter has been placed before this Bench.

4. In response to the notice issued to the States of Punjab, the Deputy Secretary, Government of Punjab, Department of Home Affairs & Justice, has referred to the meeting held on 16.04.2012, wherein the Principal Secretary, Health & Family Welfare was requested to issue necessary instructions to all the Medical Officers to record their evidence through Video Conferencing. In pursuance thereof, the Department of Health & Family Welfare has issued a circular on 02.07.2013 directing the Medical Officers, who appear as witness, to record their evidence through Video Conferencing and that concerned Doctor should reach the NIC Centres situated at District Headquarters or prisons premises to record their evidence through video conferencing.

5. It has also come on record that in the State of Punjab 32 Court sites in Phase - I and 23 Court sites in Phase - II have been provided with Video Conferencing facility. The Courts in Gurdaspur, Batala & Pathankot, have not provided with Video Conferencing facility so far, in the State of Punjab.

6. On the other hand, in an affidavit filed by the Additional Secretary to Government of Haryana, Administration of Justice Department, reference is made to the circular issued by the Director General Health Services, Haryana on 13.07.2012 for recording of the evidence of the Medical Experts through Video Conferencing.

7. At the time of hearing, Ms. Shubhra Singh has produced on record communication dated 12.08.2013 pointing out that the testimonies of Judicial Magistrates, Doctors and Experts have been recorded through Video Conferencing and that no difficulty has been reported by any Public Prosecutor while recording the statements of the witnesses through Video Conferencing.

8. Similarly, Ms. Aashima Mor, learned counsel representing the Chandigarh Administration, referred to the meeting of the Doctors of Post Graduate Institute of

Medical Sciences & Research, Chandigarh; Government Medical College & Hospital, Sector 32, Chandigarh and Government Multi-Specialty Hospital, Sector 16, Chandigarh held on 29.07.2013, wherein it has been resolved to the following effect:

1. All the parties have no objection in principle for the Video Conferencing for evidence.
2. Every institution has an IT Department and hence it would be more practical and less cumbersome if every institute is directed to have their own Video Conferencing Centre.
3. A time slot between 11.00 AM to 1.00 PM on working days may be kept fixed for Video Conferencing.
4. NIC should be directed to provide Digital Signatures & any other technical assistance which may be required from time to time.

In view of the above position, to facilitate the recording of evidence of the Medical Experts through Video Conferencing, so that the Medical Experts are able to devote their time in the hospitals in attending patients rather than commuting to Court for recording of their evidence and to make optimum use of Video Conferencing facility provided in the Court Complexes in the States of Punjab & Haryana as well as U.T. Chandigarh and in Central/District Jails; NIC District Headquarters or District Administration Headquarters, we find that the directions, as reproduced above, requires to be deleted. We order accordingly. We also issue the following directions in exercise of the inherent powers conferred on this Court u/s 482 Cr.P.C. and/or Section 151 CPC and Under Article 226 of the Constitution:

- (i) The State Government shall set up Video Conferencing Rooms in the Civil Hospitals, if not already available, to facilitate recording of evidence of medical experts through Video Conferencing at the earliest preferably within a period of six months;
- (ii) The Public Prosecutor in criminal cases or Advocate for the claimant in accident cases or any other Advocate representing any party, who wishes to examine a Medical Expert is required to disclose the place of posting of the concerned Doctor along with his e-mail address and/or the contact phone number;
- (iii) The photocopies/soft copies of the documents to be proved by examining the Medical Expert, shall be forwarded to the concerned Expert by either the Public Prosecutor in criminal cases or Advocate for the Claimant in accident cases or any other Advocate representing any party requiring evidence of the medical experts. The Court will allow the Public Prosecutor or Advocates for preparation of the photocopies of the relevant documents, if the same are not available with them as per rules;

(iv) If the documents to be proved by the Medical expert are in possession of a third person or party, a simultaneous direction would be issued by the Court requiring that person to make available the documents in the Court at the time of recording of evidence of the medical expert through Video Conferencing;

(v) The concerned Court will fix a date, before which the examination-in-chief will be furnished by the Medical Expert concerned to the Court;

(vi) The concerned Court will also fix a date for the purposes of cross-examination giving tentative time slot for Video Conferencing until mechanism of booking of slots is put in place. The Doctor will confirm his availability in the said slot along with his statement to be sent to the Court;

(vii) On the given time, the Court will organize two way or three-way Video Conferencing i.e. between Court, Medical Expert and the Central/District Jail, if the accused is in custody and not in Court to facilitate recording of the statement of the medical experts;

(viii) The Registrar (Computerization) of this Court will be co-coordinator to facilitate the mechanism of recording of such evidence including development of module for fixation of time slot. In case of any difficulty in implementing the directions, the State Governments and/or the Officers including Medical Experts and the Judicial Officers may give their suggestions, which shall be given effect to as far as possible;

(ix) Until rooms/studios are established in Civil Hospitals, the medical experts may go to such rooms/studios available in the District Court, DC office or the NIC office. In-charge Officers of such institutions would facilitate recording of evidence of medical experts by permitting them access to the VC rooms/studios. The State Government shall issue appropriate directions in this regard;

(x) The above directions will be applicable to the Medical Experts posted outside the District of the place of Court sitting and shall not preclude the Court in appropriate cases to record evidence of the Medical Experts in Court.

With these directions, the matter is disposed of.