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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **C.M. (Main) No.487 of 2007 & C.M. Appl. Nos.5027 of 2007, 8888 of 2007**

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08.02.2010

ALKA RANI DHINGRA & ANR. Petitioners

Through: Ms. Sunita Tiwari, Advocate.

Versus

STATE & ORS.

.....Respondents

Through: None.

Date of Reserve: 2nd February, 2010

Date of Order: 8th February, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By this petition, the petitioner has assailed an order dated 6th March, 2007 passed by the learned trial court. The case was fixed for evidence on 6th March, 2007. A perusal of the record shows that the petitioners objected to filing of photocopies of the official record summoned from RW-1 and also wanted the cross-examination to be deferred. The court deferred the cross-examination of RW-1 and closed the cross-examination of RW-3. Record of the trial court also shows that on 15th January, 2007, RW-1, Mr. Rajesh Kumar had appeared from office of the respondent (Smt. Neeraj Dhingra). He has produced some record on that day but counsel for the parties were not available and he was asked to come on next date of hearing, i.e., on 6th March, 2007. On 6th March, 2007 when the witness again appeared, the counsel for the petitioner refused to cross-examine the witness on the ground that the photocopies of the record produced by this witness should

not have been allowed by the court.

2. The witness Mr. Rajesh Kumar was a clerk from DRM Office, Northern Railway. Official record was summoned from the office of Northern Railway by respondent and he had brought the record and the court directed him to place on record photocopies of the letter brought by him on the ground that the file of the Department cannot be retained and this photocopy shall serve as a reference as to what record was produced. The record was regarding an application made by Smt. Neeraj Dhingra for maternity leave and a letter sanctioning the maternity leave. The objection raised by the petitioner regarding not taking these documents on record were recorded in the evidence sheet itself and the trial court observed that these documents were being retained in the court file for future reference to know what record was produced. Learned counsel did not cross-examine the witness on the ground that she had to seek instructions. The court discharged the witness observing that in case the witness is re-summoned, the cost shall be borne by the petitioner. This witness was re-called on 12th July, 2007 and the counsel did not cross-examine the witness stating that in view of the order dated 6th March, 2007, she does not need to cross-examine this witness. The cross-examination of this witness was recorded nil.

3. The other witness who appeared on 6th March, 2007 was RW-3, Smt. Neeraj Dhingra herself. This witness was also not cross-examined by the counsel for the petitioner on the ground that certain documents had been filed by the witness in her statement and she need to seek instructions from her client. The court told the counsel that no new document had been filed by the witness and all documents were in the knowledge of the petitioner and she should cross-examine the witness. The witness had only placed on record birth certificate of her child, death certificate of her husband and a

certificate of the child that child was a *bona fide* student of Mahashay Chunnilal Shishu Mandir School and a certified copy of an FIR lodged by the petitioner against Mr. Vijay Kumar (deceased). Despite the court insistence that she should cross-examine the witness, counsel did not cross-examine the witness and the cross-examination was recorded as nil. After passing orders regarding these two witnesses in the evidence sheet itself, the court passed the impugned order dated 6th March, 2007 by which she reflected what was recorded in the evidence sheet.

4. The petitioner has challenged order recorded in order sheet dated 6th March, 2007 and has not challenged the order recorded by the trial court in the evidence sheet whereby cross-examination of RW-3 was closed and RW-1 was ordered to be re-called. In the order sheet of 6th March, 2007, the court made observation about filing of photocopies and observed that these documents be not taken on record as they are photocopies only. The court specifically observed that RW-1 was recorded but cross-examination was deferred. The court also observed that RW-3 was recorded and cross-examination was recorded as nil. It appears that counsel for the respondent made a statement that he was not to examine any other witness. The trial court recorded this also and closed the evidence on behalf of Smt. Neeraj Dhingra and fixed the case for evidence on behalf of other respondent, namely, Ms. Shashi Prabha for 12th April, 2007.

5. The order is assailed by learned counsel for the petitioner that on one hand in the order sheet, court had observed that the documents were photocopies and be not taken on record but the order on evidence sheet shows that these documents need not be rejected. On one hand the cross-examination of RW-3 was recorded as nil while cross-examination of RW-1 was deferred and still the statement of respondent closing the evidence was recorded. She states that the order needs to be set aside.

6. This petition seems to be preferred just to prolong the case. The order passed by the learned District Judge, just below the statement of RW-1 and RW-3 makes it abundantly clear as to what was the order in respect of evidence of RW-1 and what was the order in respect of RW-3. The order sheet was supposed to reflect the order passed by the learned District Judge in respect of RW-1 and RW-3. There appears to be an inadvertent error which crept in the order regarding photocopies not to be taken on record.

7. I consider that these photocopies since had already been taken on record while recording evidence of RW-1, this observation should not have been there. Regarding closure of evidence by Smt. Neeraj Dhingra, it is clear that Smt. Neeraj Dhingra's plea was that she did not want to examine any other witness. Since cross-examination of RW-1 was deferred at the request of the petitioner and the court had ordered that she would have to bear the cost of re-summoning, except for cross-examination of RW-1, no other evidence was to be produced by Smt. Neeraj Dhingra and she was within her right to make statement closing her evidence. This witness, RW-1, was re-called for cross-examination again on 12th July, 2007 and was not cross-examined deliberately. The petitioner deliberately did not cross-examine RW-3 and moved this petition. RW-3 had not produced any document which was new. The date of birth of the child, date of death of deceased and school, etc., were all stated in the pleadings itself. The FIR was filed by the petitioner and was within the knowledge of the petitioner. The witness only brought it to the notice of the court that there was an FIR. Had there been some new fact brought by this witness on record contrary to the pleadings or the documents or she had tried to project a case which was not pleaded by her, the petitioner would have been justified in objecting to the documents but still she could not have refused to cross-examine the

witness. Since she had got her objections recorded, so witness was not to be sent back unexamined. But it has become a practice not to examine the witness on the day they appear and make them run to the court time and again. The trial court is not supposed to the tune of advocates pleasure in calling witnesses again and again because the counsel does not want to cross-examine the witness on a particular day or is not ready for cross-examination or had not sought instructions from the client in time. Whenever a case is fixed for cross-examination of the witness, the counsel is supposed to seek instructions well in advance and come ready with questions in the court to be asked from the witness. If there are any documents regarding which she wants to raise objections, she can raise objection about the documents which the court may decide on the spot or may defer the decision at the time of final hearing. But on this ground, the counsel cannot refuse to cross-examine the witness. The court did right thing in closing the cross-examination.

8. I find no reason to interfere with the order of the trial court. The petition is hereby dismissed with cost of Rs.5,000/- to be paid to the respondents. Trial court record be sent back immediately.

SHIV NARAYAN DHINGRA J.

FEBRUARY 08, 2010
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