

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ **CRL.M.C. 3617/2010 and CRL.M.A. 17570-71/2010**

Decided on 22.11.2010

IN THE MATTER OF :
MANOJ KUMAR

..... Petitioner
Through: Mr. M.L. Yadav, Advocate with
Mr. Lokesh Chandra, Advocate

versus

STATE OF DELHI Respondent
Through: Mr. Navin Sharma, APP for the State

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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| 1. Whether Reporters of Local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

HIMA KOHLI, J. (Oral)

1. The present petition is filed by the petitioner praying *inter alia* for setting aside the order dated 19.10.2010 and seeking permission to examine the defence witnesses. The petitioner has also sought permission to examine PW-1 and PW-3, parents of the deceased, without depositing the costs imposed on him.

2. It is pertinent to note that vide order dated 01.04.2010, the learned ASJ noticed the fact that PW-1 and PW-3 were material witnesses (parents of the deceased) and were examined in September 2009 by the other co-accused closely related to the petitioner, after which a number of

dates were given, but no request was made by the petitioner to cross-examine them. Despite the aforesaid position, the application of the petitioner for cross-examining the aforesaid witnesses was allowed, subject to payment of costs of Rs. 50,000/-, out of which Rs. 10,000/- each were directed to be given to PW-1 and PW-3, and of the remaining Rs. 30,000/-, 50% was directed to be deposited in DLSA and 50% in the Advocate Welfare Fund of Delhi Bar Council. The learned ASJ further directed that cross examination of both the witnesses was to be carried out within a time bound period of one hour for which only one opportunity was to be granted and in case the witnesses could not be available due to any supervening reasons, their examination already conducted would be admissible.

3. As per the counsel for the petitioner, an application was filed later on for waiver of said costs imposed vide order dated 01.04.2010, but the same was dismissed vide order dated 12.07.2010. In the order dated 12.07.2010, the learned ASJ observed that PW-1 and PW-3 were present for the third time in the court, in order to be cross-examined by the petitioner, however the counsel for the petitioner was not present and even the costs imposed vide order dated 1.04.2010 had not been paid by the petitioner. Observing that the petitioner did not appear to be serious about cross-examining the aforesaid two witnesses, the learned ASJ discharged them. The petitioner has not specifically challenged either of the aforesaid orders. Instead, he seeks permission to examine the said witnesses, without depositing the costs.

4. Counsel for the petitioner states that in the order dated 12.07.2010, the Court had erroneously recorded that the counsel for the

petitioner/accused was not present since morning though the public witnesses were present for the third time to submit themselves for their cross-examination subject to payment of costs by the petitioner. He draws the attention of this Court to pages 16 to 20 of the paper book to state that the cross-examination of PW-9 was conducted by him on 12.07.2010. He submits that even if it is assumed that the counsel was not available for any reason, in the interest of justice, an *Amicus Curiae* should have been appointed by the Court for cross-examining the witnesses.

5. It is not sufficient for the counsel for the petitioner to contend that he was present in court on 12.7.2010, as the costs imposed by the learned ASJ in the order dated 1.4.2010 had still not been paid by the petitioner, showing the petitioner's lack of seriousness in availing of the opportunity to cross-examine PW-1 and PW-3. Furthermore, considering the fact that the same counsel, who is engaged by the petitioner to conduct the present petition, was available before the learned ASJ on 12.07.2010, the learned ASJ could not have been expected to appoint an *Amicus Curiae* additionally, to assist the Court to cross-examine PW-1 & PW-3. No justification has been given by the counsel for the petitioner for approaching this Court so belatedly, when the order was passed almost eight months ago, on 01.04.2010 and the application for seeking review of the aforesaid order was dismissed over four months ago, on 12.07.2010. A perusal of the file reveals that the next date of hearing fixed in the matter is 26.11.2010. This Court is therefore inclined to agree with the learned ASJ that the petitioner is intentionally dragging his feet and trying to delay the proceedings on one pretext or the other. There is no other justification for

filing the present petition on the eve of the date of hearing. No explanation is coming forth for non-filing of a petition to assail the orders dated 01.04.2010 and 12.07.2010 within a reasonable time.

6. In the order dated 19.10.2010, the learned ASJ had noted that the petitioner had not bothered to file the list of witnesses and nor had the witnesses been summoned. As a result, the defence evidence was closed and it was directed that the matter be listed for arguments on 26.11.2010.

7. In the course of arguments, though no submission has been made by the counsel for the petitioner, assailing the order dated 19.10.2010 by which, the defence evidence of the petitioner was closed, however, as counsel for the petitioner assures the Court that he has no intention of delaying the trial, in the interest of justice, a last opportunity of two days is granted to the petitioner to file the list of defence witnesses. If the list is filed on the date fixed, i.e., on 26.11.2010, then one opportunity be given to the petitioner to summon the witnesses for their examination. However, in case, the petitioner does not take any step to file the list of witnesses on 26.11.2010, the learned ASJ shall proceed to hear the final arguments in the matter, as already ordered.

8. The petition is disposed of alongwith the pending applications.

9. The Registry is directed to forward a copy of this order forthwith to the learned ASJ for information and compliance.

NOVEMBER 22, 2010
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(HIMA KOHLI)
JUDGE