

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-40023 of 2015
Date of Decision: 30.11.2015**

Lalit Kumar

--Petitioner.

Vs.

Surinder Kaur

--Respondent.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Gurcharan Dass, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of the impugned order dated 12.9.2014 (Annexure P-6) passed by the learned Additional Sessions Judge, Ludhiana, whereby application of the petitioner under Section 391 read with Section 311 Cr.P.C., for summoning the complainant as witness, was dismissed.

Learned counsel for the petitioner submits that complainant was not physically available in India and it was only her attorney who was cross examined by the petitioner. He further submits that although attorney of the complainant was cross-examined by the petitioner but some questions could not be put to him because the same could have been answered only by the

complainant herself. He submits that the learned appellate court failed to appreciate true factual as well as legal aspect of the matter, while passing the impugned order, which has resulted in serious miscarriage of justice. He concluded by submitting that petitioner ought to have been granted opportunity to summon the complainant for her cross examination. He prays for allowing the present petition.

Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the case, present one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

It is a matter of record that evidence of the petitioner was not closed by the order of the court. It is also not in dispute that attorney of the complainant-respondent was put to cross examination by the petitioner. Further, petitioner closed his evidence on his own and that too, after satisfying himself that he has produced the best evidence available with him. It is also not in dispute that no such application under Section 311 Cr.P.C. was ever moved by the petitioner during the course of the trial which was decided against the petitioner.

When the abovesaid fact situation was put to the learned counsel for the petitioner, he had no answer and rightly so, it being a matter of record. No reason is forthcoming as to why the petitioner

did not move any such application earlier, if it was so necessary. Once the petitioner has cross-examined the attorney of the complainant-respondent and thereafter, closed the evidence on his own, he cannot be permitted to find fault either with the court or with the complainant, in this regard. Had the petitioner put some difficult questions to attorney of the complainant which might have not been answered by him, petitioner would have been justified in moving an application under Section 311 Cr.P.C. However, that is not the fact situation in the present case.

In fact, whatever questions were put to the attorney of the complainant, the same were answered by him. It seems that petitioner has been trying to delay the trial at every stage, which is not permissible in law. It is not even the argued case on behalf of the petitioner that he was not granted sufficient opportunity by the learned trial court to produce his entire evidence. Had the petitioner put some additional questions to the attorney of the complainant-respondent which would have not been answered by the attorney, benefit thereof would have gone in favour of the petitioner, however, he did not opt to do so for the reasons best known to him. Having said that, this Court feels no hesitation to conclude that the impugned order has not been found suffering from any patent illegality and the same deserves to be upheld.

During the course of hearing, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality apparent on record in the impugned order, so as to convince this Court to take a different view than the one taken by the learned

appellate court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. In this view of the matter, it is unhesitatingly held that learned trial court considered each and every relevant aspect of the matter, while passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the above said observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

30.11.2015
AK Sharma