

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

Criminal Misc.No.M-43403 of 2015

Date of Decision: December 23, 2015

Sandeep Soni

...Petitioner

Versus

State of U.T.Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Y.P.Singla, Advocate,
for the petitioner.

Naresh Kumar Sanghi, J.(Oral)

Notice of motion.

At asking of the Court, Mr.J.S.Toor, APP for UT Administration, who is present in the Court, accepts notice on behalf of the respondent-State. A complete copy of the paper book has been supplied to him in Court.

Learned counsel for the parties have agreed that the present petition can be disposed of today itself.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

The petitioner is facing the prosecution for the offences punishable under Sections 279, 304-A and 337, IPC and Section 185 of the Motor Vehicles Act in a case arising out of FIR

No.14, dated 13.01.2009, registered at Police Station, Sector 36, Chandigarh. Kashmir Singh, an eye-witness of the occurrence, had appeared as PW-1 on 19.11.2013. His examination-in-chief was recorded but the cross-examination was deferred at the request of learned counsel for the petitioner. Thereafter, the case was adjourned to 13.12.2013, 10.04.2014, 24.04.2014, 03.06.2014 and 29.08.2014. On the said dates, either the Presiding Officer was not holding the Court or the witness, Kashmir Singh, was not present and as such, the case was adjourned to 16.09.2014. An application for grant of exemption from personal appearance of the petitioner was presented by his counsel which was accepted. Kashmir Singh (PW-1) was present on that date however, after moving the application for grant of exemption, learned counsel representing the petitioner, came to High Court and as such, in his absence learned proxy counsel requested the Court below to adjourn the case but the Court below declined the prayer and closed the cross-examination of Kashmir Singh (PW-1) without there being any cross-examination.

Learned counsel for the petitioner has pointed out that later learned counsel had withdrawn from the case without there being any information to the petitioner. After several months, the petitioner came to know about the absence of his

counsel on 16.09.2014 when Kashmir Singh (PW-1) had appeared for cross-examination and also learnt regarding the withdrawal of his counsel from the case. As soon as these facts came to the notice of the petitioner, the present petition has been filed. It has also been pointed out that Kashmir Singh (PW-1) is an eye-witness of the occurrence and if the opportunity of cross-examination is not afforded to the petitioner then he will be prejudiced in his defence. He has further submitted that even the petitioner is ready to pay costs though he was not at fault if an opportunity is afforded to him to cross-examine the witness.

Learned counsel for the State submits that if the opportunity is afforded to the petitioner to cross-examine PW1 then heavy costs be imposed.

This Court finds that Kashmir Singh (PW-1) is the material witness and if the opportunity to cross-examine him by the petitioner is not afforded then the petitioner would suffer irreparable loss.

In view of the totality of the facts and circumstances of the case, the present petition is allowed and the order dated 16.09.2014 (Annexure P-2) passed by learned trial Court is set aside. It is directed that Kashmir Singh (PW-1) be called for cross-examination by the petitioner or his counsel subject to

payment of costs of ₹20,000/- (Rupees twenty thousand only) to be deposited with the District Legal Services Authority, Chandigarh. It is made clear that only one effective opportunity shall be afforded to the petitioner to cross-examine Kashmir Singh (PW-1).

December 23, 2015
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(Naresh Kumar Sanghi)
Judge