

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

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**Crl. Misc. No.M-6807 of 2015
Date of decision: August 31, 2015**

Santosh Kumari and another

....Petitioners

versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. Sandeep Arora, Advocate for the petitioners.

Mr. Rupam Aggarwal, DAG, Punjab.

Mr. Viney Puri, Advocate for respondent No.2.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for setting aside the order dated 31.01.2015 passed by learned Chief Judicial Magistrate(NRI cases), Jalandhar (Annexure P-4) whereby cross-examination of Anita Rani(PW-1) and Kamaljit Kaur(PW-2) has been treated as nil whereas the petitioners cannot be penalized as no opportunity to defend themselves was given.

Learned counsel for the petitioners submits that Anita Rani(PW-1) was examined-in-chief on 01.03.2014 and partly cross-examined on 18.09.2014

whereas Kamaljit Kaur (PW-2) was examined in chief on 28.07.2014 and case was adjourned to 21.11.2014. He also submits that on 21.11.2014, the case was fixed for cross-examination of aforesaid witnesses but it was submitted that there was a possibility of compromise between the parties and case was adjourned to 16.01.2015. On that day also, no PW was present and thereafter, it was adjourned to 31.01.2015. Learned counsel also submits that on 31.01.2015, both the accused-petitioners were present but their counsel was not present and cross-examination of PW-1 and PW-2 was treated as nil. He also submits that the petitioners are ready to compensate the other party and moreover, no prejudice is going to be caused.

Notice of motion was issued on 02.03.2015 and in response thereto, reply on behalf of State has been filed which is already on record.

Learned counsel for respondent No.2 opposes the submissions made by learned counsel for the petitioners.

Heard arguments advanced by learned counsel for the parties and have also perused the documents as well as zimini orders available on record.

Admittedly, the case was fixed for cross-examination of aforesaid witnesses but because of the possibility of compromise, the aforesaid witnesses were not cross-examined. On the next date of hearing i.e. 16.01.2015, no PW was present. On 31.01.2015, the counsel representing the accused-petitioners was not present and their cross-examination was treated as nil. The petitioners could not be made to suffer because of the absence of their counsel as they were not at fault. Moreover, the petitioners are ready to compensate the other party.

Accordingly, the present petition is allowed. Trial Court is directed to give one more opportunity to the petitioners to cross-examine the abovesaid two witnesses on or before the next date of hearing i.e. 15.09.2015 or any other date convenient to the trial Court subject to payment of costs of Rs.10,000/- which shall be paid to respondent No.2 in the shape of demand draft.

However, it is made clear that in case, the petitioners are unable to cross-examine the said witnesses on the date fixed by the Court, no further opportunity will be granted.

August 31, 2015
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(DAYA CHAUDHARY)
JUDGE