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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5102-2015 [O&M]

Date of Decision : February 10th, 2016

Mehak @ Silki

.... Petitioner

Versus

Ajay Singh

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr.Vivek Salathia, Advocate,
for the petitioner.

Mr. Akhilesh Vyas, Advocate,
for the respondent.

SHEKHER DHAWAN, J.

Present petition under Article 227 of the Constitution of India for setting aside order dated 29.07.2015 passed by Additional District Judge, Amritsar whereby application filed by the present petitioner for non-examination of witnesses, namely, Rajesh Kumar, Clerk from the office of Commissioner of Police [PW-7] and HC Rajinder Kumar [PW-6] was dismissed.

2. Relevant facts for the decision of this petition; that a petition under Section 13 of Hindu Marriage Act, 1955 was pending before the Court below and the case was at Petitioner's evidence stage. On 29.07.2015, when the case was fixed for petitioner's evidence, present

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petitioner moved an application for non-examination of PW-7 Rajesh Kumar, Clerk from the office of Commissioner of Police [PW-7] and HC Rajinder Kumar [PW-6], taking the plea that the witnesses are not required to be examined because Rajesh Kumar was examined earlier as PW-1. The Court below dismissed the said application and also ordered that cross-examination be treated as NIL.

3. Learned counsel for the petitioner submitted that Rajesh Kumar was earlier examined and he was duly cross-examined before the Court below and he was summoned again which is legally not permissible and the Court below has passed the order, which is not in accordance with law and the same be set-aside.

4. Learned counsel for the respondent took the plea that necessity had arisen to summon Clerk from the office of Commissioner of Police, Amritsar because Rajesh Kumar appeared as PW-1 and in his cross-examination, he had taken the plea that he had not brought the application bearing No.2745-PCW dated 19.11.2014. However, he also admitted that as per record, three applications, statement of both the parties and documents were attached. The respondent had moved application so as to summon Clerk from the office of Commissioner of Police, Amritsar to bring the said file and Rajesh Kumar is the only concerned official in the office of Commissioner of Police, who had appeared before the Court and his examination-in-chief was recorded and he had brought the original file of application bearing No. 2745-PCW dated 19.11.2014. Learned counsel representing the petitioner did not cross-examine the witnesses and moved the present application, which was rightly declined by the Court below and the present petition be dismissed being without any merit.

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5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that PW-1 Rajesh Kumar was summoned as official witness alongwith summoned record which was being maintained in the office of Commissioner of Police, Amritsar. When he appeared as PW-1, he had taken the plea in the cross-examination that he had not brought application bearing No.2745-PCW dated 19.11.2014. Thereafter, the petitioner was left with no other alternative except to summon some Clerk from the office of Commissioner of Police, Amritsar so as to make statement on the basis of the record and probably Rajesh Kumar was the only dealing official and custodian of the said file, who again appeared as PW-7 and he had made the statement on the basis of record only. PW-6 HC Rajinder Kumar, posted in the Litigation Branch, office of Commissioner of Police, Amritsar had made statement on the basis of record only. There is no reason or justification for the present petitioner not to cross-examine said witness by taking technical objection that the said witnesses could not be re-examined. The objection raised by the present petitioner could hold much ground if a witness was to be examined again, who was to make statement on the basis of his personal knowledge. But, if a witness is to make statement on the basis of official record only, then such technical objection is not maintainable. The Court below has rightly observed that the respondent is just taking such pleas to delay the disposal of main petition, which is legally not permissible.

6. Another aspect of the case is that vide another order dated 29.7.2015, the cross-examination of both these witnesses was dispensed with being opportunity given, Nil. Passing of such an order is certainly going to cause loss to the present petitioner and for redressal of the same,

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the orders dated 29.7.2015 passed by Additional District Judge, Amritsar are set-aside whereby cross-examination of PW-6 and PW-7 was ordered to be treated as NIL, with the further direction that the Court below shall summon PW-6 Rajinder Kumar and PW-7 Rajesh Kumar, Clerk, office of Commissioner of Police, Amritsar on the next date of hearing and shall given an opportunity to the present petitioner to cross-examine the witness if any cross-examination is to be done by the present petitioner.

7. The revision petition stands disposed of in the above terms.

**(SHEKHER DHAWAN)
JUDGE**

February 10th, 2016
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