

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-22944 of 2015

Date of decision : 16.02.2016

Vijay Kumar

..... Petitioner

versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Ankur Bansal, Advocate
for the petitioner**

Mr. K.S. Aulakh, AAG Punjab

**Mr. Amit Dhawan, Advocate
for respondents No. 2 to 4**

ANITA CHAUDHRY, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 03.07.2015 passed by the Chief Judicial Magistrate (NRI) Jalandhar in the petition filed under Section 125 Cr.P.C. whereby application moved by the petitioner under Section 311 Cr.P.C. for examining the petitioner as a witness was dismissed. A challenge has also been laid to order dated 02.06.2015 whereby evidence of the respondent had been closed by the Court.

Briefly the background is necessary first.

A petition under Section 125 Cr.P.C. was filed by the Jaswinder Kaur against the husband who is resident of New York. The respondent appeared through his Attorney who was his sister. The wife had completed her evidence and the case was posted for evidence of the respondent and the Attorney tendered her affidavit and the matter was adjourned for cross examination when an application was moved by the petitioner for rejecting the

affidavit as it had been filed by an imposter. Reply to that application was taken and the trial Court vide its order dated 18.05.2015 (Anenxure P-18) disposed of the application without expressing any opinion on the merits of the cases with liberty to the petitioner to raise the issue at the time of final arguments. At the same time the case was adjourned for cross examination for 02.06.2015.

On 02.06.2015 the Attorney's presence was recorded but it is stated that she was not present in the Court. The evidence of the respondent was closed on that day. Thereafter, an application under Section 311 Cr.P.C. was filed by the respondent that the affidavit of the Attorney had been tendered in November 2014 and the petitioner did not cross examine the Attorney and the case had been adjourned a number of times and on the day the evidence was closed the Attorney was not present and a medical certificate had been placed on file and the Court had wrongly closed its evidence. The other prayer was that the respondent had made arrangement to come to India and had also booked his tickets and his statement was necessary and he may be granted one opportunity to get his statement recorded. That prayer was rejected on 03.07.2015 and the case was adjourned for final arguments.

The Coordinate Bench vide order dated 29.07.2015 had stayed the passing of the final order.

Notice was given to the respondents who had put in appearance.

I have heard learned counsel for the parties.

Learned counsel for the petitioner contends that they were only seeking one opportunity to examine the petitioner who had travelled to India. The counsel states that petitioner had arrived in India in June 2015 and is still in India and referred to the copy of the passport as well as copy of the Attorney which was given in favour of his sister. It has further been submitted that the order closing the evidence was interlocutory order, therefore, petition under Section 482 Cr.P.C. could only be filed. The counsel further states that the petitioner's attorney had appeared and had submitted the Affidavit by way of

evidence but no cross examination was effected and the petitioner filed an application for rejecting the affidavit and the Court had postponed the decision on that application leaving it to be dealt with at the final stage. The counsel submits that thereafter the attorney could not appear and the medical certificate is available on record but the presence was wrongly noted and the evidence was closed and the petitioner had not cross examined the Attorney which should have been allowed and now when the husband has come back they were seeking one opportunity to lead their evidence.

The submissions on the other hand was that petition was being contested by the sister as Attorney and when the evidence had been closed the petitioner has returned to India. It was urged that he was denying the relationship through out and has delayed the proceedings and could not be given any opportunity.

Responding to the arguments the submission was that though the relationship was denied but the petitioner was paying the maintenance regularly.

I have gone through the zimni orders and have noted the peculiar facts and circumstances of the case. The wife had taken number of opportunities to lead her evidence and the case was fixed for evidence of the respondent for the first time on 08.09.2014. The adjourned date was a holiday and the case was adjourned to 16.09.2014. No witness was present and the case was adjourned to 09.10.2014. Some maintenance amount was paid and the case was adjourned for evidence and for making payment. The affidavit of the Attorney was tendered in evidence on 10.11.2014 and the case was adjourned for cross examination. On the adjourned hearing, the lawyers were not attending the Courts and the case was adjourned to 22.01.2015. On that date the petitioner moved an application for rejecting the affidavit. The Court adjourned the matter to 23.02.2015 for respondent evidence and for making payment and also for reply. No evidence was recorded on the adjourned

hearing and the case was fixed for consideration of the statement. Thereafter, there was a request of transfer of the case to the NRI Court. The case was transferred to the Court of CJM/NRI Court, Jalandhar where the parties were directed to appear on 10.04.2015. No Court work was done on 10.04.2015 and 07.05.2015. The application filed by the petitioner was disposed of and the case was adjourned to 02.06.2015 for the evidence of the respondent.

The above would show that the petitioner did not cross examine the Attorney of the respondent and wanted the affidavit to be rejected. There appears to be a mistake in noting the presence of the attorney on 02.06.2015. There is a medical certificate which is stated to have been produced before the Court on 02.06.2015. The respondent wanted to appear as his own witness which has been declined by the Court below.

I am of the view that opportunity should have been given to the petitioner allowing him one opportunity to examine himself. The respondent is yet to cross examine the Attorney. The petition is allowed. The impugned orders are set aside. The trial Court would give opportunity to cross examine the Attorney and examine the petitioner but he would be given only one opportunity. The case is stated to be fixed for 19.02.2016 on which date both the sides would appear. The Court will fix a date convenient to it for recording the statement of the petitioner and for cross examination of the Attorney, but on payment of Rs. 5000/- as costs. The costs would be paid to Jaswinder Kaur and it would be a condition precedent. There would be no request for adjournment from either side.

The petition is disposed of on the above terms.

A copy of the order be sent to the Court concerned.

February 16, 2016

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**(ANITA CHAUDHRY)
JUDGE**