

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

CRM-M-30262-2013

Date of Decision: FEBRUARY 18, 2016

ASHA TIWARI

..PETITIONER

VERSUS

BRAHM DATT TIWARI & ANR

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

1. Whether reporters of local newspaper may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the digest?

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Raman Handa, Advocate for
Mr. R.S. Bajaj, Advocate
for respondent No.1.

NARESH KUMAR SANGHI, J.

The reply filed by respondent No.1 along with Annexure R1/1, is taken on record. A copy has been supplied to the learned counsel for the petitioner.

Both the learned counsel for the parties submit that they are ready to advance the arguments.

Learned counsel for the petitioner submits that learned trial Court without realizing the importance of the evidence to be led by the petitioner-complainant closed the evidence vide order dated 21.05.2013 Annexure P-3; the application filed under Section

311 Cr.P.C. by the petitioner-complainant was also dismissed without assigning cogent reasons vide order dated 06.06.2013, Annexure P-5. He further submits that the expert to be examined in favour of the complainant was present on three consecutive dates but the Civil Court file which was summoned could not be produced by the concerned clerk and as such, the deposition of the expert could not be recorded; on the day when the file was produced before the Court, the expert witness could not attend the Court due to his ill health and as such, there was no fault on the part of the petitioner-complainant in not leading her entire evidence. He further submits that if one opportunity is granted to the petitioner-complainant, even after imposing the adequate costs, the petitioner would complete her evidence.

On the other hand, learned proxy counsel for the respondent No.1-accused submits that the complaint was filed in the year 2005 and in the year 2013, after affording several last opportunities, learned trial Court was constrained to close the evidence of the complainant. He further submits that the report to be produced on record before learned trial Court was not available in the Civil Court file.

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

There is no gainsaying that while exercising jurisdiction under Section 311 Cr.P.C., the Court can allow to lead evidence if it is essential for the just decision of the case. But it all depends upon the facts of each case as to whether the evidence proposed to be led is essential for the just decision of the said case. It is equally true that adequate opportunities are to be granted to either party to lead its evidence. In the case in hand, the complaint was filed in the year 2005 and till 2013, when the learned trial Court closed the evidence of the complainant, the petitioner-complainant could not complete her evidence. It has emerged on record that two last opportunities were also afforded to the complainant to complete her entire evidence. On the second last date, the petitioner-complainant stated to the Court that if she would not be able to complete her evidence, then the same should be deemed to be closed. Despite that learned trial Court was generous to afford one more opportunity to the petitioner-complainant to complete her evidence. When after affording two last opportunities, the petitioner-complainant failed to complete her evidence, then the Court below was constrained to close the evidence by order. Thereafter, the application moved under Section 311 Cr.P.C. for leading additional evidence was also dismissed. After scanning whole material and the arguments advanced before this Court by learned counsel for the parties, this Court finds that the learned Trial Court has rightly exercised its

jurisdiction to close the evidence of the petitioner-complainant by order.

As a sequel to the above, I find no merit in the present petition and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

February 18, 2016
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