

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

Crl. Misc. 32514 of 2015 (O&M)
Date of decision: 26.10.2016

Kavita

...Petitioner

Versus

Palvinder and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Rohit Vats, Advocate
for the petitioner.

Mr. Parveen Chander, Advocate,
for respondents No. 1 and 5.

Mr. Sanjay K. Saini, AAG, Haryana.

JAISHREE THAKUR, J. (Oral)

The instant case has been filed impugning order dated 31st August, 2015 passed by the Judicial Magistrate Ist Class (JMIC), Karnal, whereby the pre-charge evidence of the complainant/petitioner has been closed and for seeking permission to produce Yash Pal Sharma, son of the petitioner, as a witness at the pre-charge stage.

Learned counsel for the petitioner submits that the complainant has to examine only one more witness, namely her son Yash Pal Sharma, who could not be examined on account of his illness and also on account of the fact that the complainant herself was unwell on the date when the case was listed. Learned counsel for the petitioner has produced zimni orders and reading of the same would show that the learned JIMC on the 1st day of May, 2015 had adjourned the case for 6th May, 2015 for pre-charge evidence

of the complainant as well as for filing reply to the application seeking exemption from personal appearance of the accused Silk Ram ASI. On 6th May, 2015, one CW was examined and thereafter the matter was again adjourned to 10th June, 2015 for filing reply to the application for exemption by the accused Silk Ram ASI, Police Station City Karnal, who was posted as Sub-Inspector (Economic Cell), Rohtak. On the adjourned date, the petitioner/complainant Kanta was examined in chief and cross -examination was deferred on account of the witness not feeling well. The matter stood adjourned to 28th August, 2015. On 28th August, 2015, the matter was adjourned on account of the fact that the complainant was not well and an application for exemption from personal appearance had been moved in this regard. The case was adjourned for 31st August, 2015 for pre-charge evidence of the complainant on which date, the complainant could not appear on account of illness and another application along with medical certificate was moved for exempting her from personal appearance. On that date, the complainant was to examine Yash Pal Sharma her son as CW-4, who could not appear on account of illness. The trial court, however, closed the pre-charge evidence of the complainant while noting that the personal appearance of the complainant is exempted but closed the pre-charge evidence of the complainant on the ground that no complainant witness is present.

It is argued by the learned counsel for the petitioner that the complainant could not appear before the trial court on account of illness and the learned trial court should have granted one more opportunity to examine

her son, particularly when while leading preliminary evidence, Yash Pal Sharma had already been examined by the complainant as CW-5 on 22nd October, 2011. It is also argued that the witness could not appear as he was suffering from dengue fever.

Per contra, learned counsel for the respondents submits that the order has been rightly passed and, as such, there is no ground for interference by this Court.

I have learned counsel for the parties and after perusing the zimni orders passed by the trial court, it is noted that the complainant had put in appearance on dates fixed. However, it is only account of illness that an application seeking personal exemption was moved on 28th August, 2015 and the learned JMIC, while allowing the application, posted the matter three days later. Since the petitioner remained unwell and was unable to appear another application was moved on 31st August, 2015 seeking examination. The trial court while taking note of the fact that the petitioner herein had moved an application seeking exemption allowed the personal appearance of the complainant to be exempted, but concluded the pre-charge evidence, which order ought not to have been passed. Learned JMIC, while taking note of the fact that the complainant was not present should have not acted in hyper technical manner while closing the pre-charge evidence. The argument raised by the learned counsel for the petitioner that the learned JMIC acted in haste while closing the evidence of the complainant despite being aware of the fact that the complainant was unwell and unable to attend the court has merit.

Consequently, the impugned order dated 31st August, 2015 is hereby set aside, giving one last opportunity to the complainant/petitioner to adduce her evidence on the date to be fixed by the trial court.

The parties are directed to appear before the trial court on 11.11.2016.

26.10.2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No