

CRM-M-38466 of 2015

Decided on:16.11.2016

Tajinder Singh & Anr.

.... Petitioners

Versus

State of Haryana

..... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Parminder Singh, Advocate
for the petitioners.

Mr. Anmol Malik, AAG, Haryana.

JAISHREE THAKUR, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 31.10.2015 (P-2) whereby the petitioners have been denied the right of cross examination of the complainant.

In brief, the facts are that an FIR came to be registered on 01.05.2013 under Sections 294, 354-D, 509 IPC at Police Station Butana District Karnal alleging that two persons namely Tajinder Singh son of Swaran Singh and Anup Sharma s/o Kamal Nain Sharma, without any work used to roam in the office of Municipal committee and made obscene talks and also had clicked complainant's photographs on the mobile. After the registration of the said complaint, the prosecution examined witnesses which were duly cross examined by the petitioners. The complainant had not put in herself for examination. On the date fixed i.e. 06.07.2015, the

complainant appeared and her examination-in-chief was recorded and cross examination was deferred and she was bound down to appear on 20.08.2015. On that date, a request was received from the complainant for an adjournment. The trial Court adjourned the case for 14.10.2015 by noting that all remaining unexamined PWs be summoned throughailable warrants in the sum of Rs.5000/-. On 14.10.2015, learned trial Court noted that the summons issued to Nisha Sharma the complainant herein received back served, but she had not put in appearance and by the said order she was summoned throughailable warrants in the sum of Rs.5000/- with one surety in the like amount for the 31.10.2015. The case was taken up on 31.10.2015, the complainant appeared in Court, but the counsel for the petitioner sought time on the ground that there was a chance of compromise between the parties. The request for adjournment was declined and the examination of the witness/complainant was treated as nil.

Aggrieved against the said order, the instant petition has been filed. It is argued by the counsel for the petitioners that the learned trial Court has erred in not acceding to the request of adjournment while treating the cross examination of the witness Nisha Sharma as nil.

Per contra counsel for the State submits that it was only on account of the fact that the counsel for the petitioners did not want to cross examine the witness that the impugned order came to be passed.

I have heard learned counsel for the parties and I am of the opinion that there is nothing on the record to show that the counsel for the petitioners has been seeking to delay the matter. The matter was listed on 06.07.2015, on which date prosecution witnesses present were examined. On 06.07.2015, the statement of the complainant was recorded. However,

the matter was adjourned for 20.08.2015 for cross examination. On 20.08.2015, the complainant was not present and no PWs were present on that date as well. By an order of the even date, it was ordered that remaining unexamined PWs be summoned through bailable warrants for 14.10.2015. Again on that date, no PWs were present neither did the complainant turn up, despite service. She was summoned through bailable warrants for 31.10.2015. On 31.10.2015, an adjournment was requested to explore the possibility of a compromise, but trial Court treated the request of an adjournment as a pretext of delaying the matter and treated the cross examination of the complainant as nil. There is nothing available on the record to show that the petitioners have been delaying the matter. In fact on the last two occasions, no prosecution witnesses were available which also would have delayed in the completion of the trial. However, these delay could not be attributed to the petitioners herein who have a right to cross examine the complainant. It could have been understood if counsel for the complainant had sought an adjournment on several occasions to cross examine which is not evident in the present case. Complainant was not available on the last two dates and had to be summoned through bailable warrants for a sum of Rs.5000/- with a surety of like amount. In the instant case when no delay could be attributed to the petitioner the denial of opportunity to cross examine the complainant is wholly unwarranted.

In view of the above, order dated 31.10.2015 is set aside and the petition is allowed granting one opportunity to the petitioners to cross examine the complainant on payment of Rs.3000/- as costs. Parties are

CRM-M-38466 of 2015 :4:

directed to appear before the Court on 30.11.2016 thereafter the trial Court
to summon the witness.

16.11.2016
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(JAISHREE THAKUR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>