

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

Crl. Revision No.1741 of 2016(O&M)

Date of Decision:-21.07.2016

Mohan Kumar Karuppayyan

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr.R.M. Sharma, Advocate for the petitioner.

Mr.Gurinderjit Singh, DAG, Punjab.

HARI PAL VERMA J.(Oral)

Through the instant petition, petitioner has impugned the order dated 02.04.2016 whereby opportunity of cross-examination of PW-4 Rajesh Dhanda and PW-5 Ram Babu Patel has been treated as NIL. Challenge has also been made to the order dated 19.04.2016 passed by learned Judicial Magistrate Ist Class, Ludhiana, whereby the application for recalling of the aforesaid order dated 02.04.2016 has been dismissed on the premise that there is no power envisaged to a criminal Court to review or recall its own order and the appropriate remedy available to an aggrieved party is to seek intervention of a higher Court by way of filing appeal or revision against the said order.

Learned counsel for the petitioner contends that it is on account of noting a wrong date, witnesses were not present for cross-examination. The case was adjourned to 02.04.2016, but the proxy counsel

wrongly informed the date to regular counsel for the accused-petitioner as 04.04.2016 instead of 02.04.2016. He further submits that in this manner, non-appearance was not intentional. Thus, when there is no fault of the petitioner or his counsel, one more opportunity to cross-examine those witnesses may be granted.

In support of his contention learned counsel for the petitioner has filed a photocopy of the diary register dated 04.04.2016 as maintained by the counsel in the usual course, annexed as Annexure P-1, wherein present case titled as “State Vs. Mohan Kumar” has been shown to be fixed for prosecution witnesses for 11.04.2016.

On the other hand, learned State counsel submits that petitioner was required to be more vigilant and to put appearance on each and every date of hearing. He has no right to get another opportunity for cross-examination of those witnesses. He is delaying the disposal of case. He further submits that in case this Court feels that another opportunity is to be granted to the petitioner, he must be burdened with some costs.

I have heard learned counsel for the parties.

A perusal of the order dated 02.04.2016 passed by this Court reveals that no one has put in appearance till 3.40 P.M. Two witnesses PWs Rajesh Dhanda and Ram Babu Patel were present since morning for their cross-examination and, accordingly, cross-examination of the said witnesses was treated as NIL-opportunity. No doubt, the petitioner has filed an application seeking recalling of the order dated 02.04.2016, but the same has been dismissed primarily on the ground that there is no power envisaged to a criminal Court to review or recall its own order and the

appropriate remedy available to aggrieved party is to seek intervention of a higher Court by way of filing appeal or revision against the said order. Therefore, this Court feels that ends of justice would be met, if the petitioner is granted one more opportunity to cross-examine those witnesses.

Accordingly, petitioner is granted one more opportunity to cross-examine those witnesses referred in the order i.e. PWs Rajesh Dhanda and Ram Babu Patel, subject to the payment of cost of Rs.5,000/- to be deposited by the accused-petitioner with the Punjab State Legal Services Authority at Ludhiana.

The petition stands disposed of accordingly.

(HARI PAL VERMA)
JUDGE

July 21, 2016
Anjal