

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

Crl. Misc. M-42365 of 2017 (O&M)
Date of Decision: November 09, 2017

Yog Raj

...Petitioner

Versus

Heena

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Surinder Thakur, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 23.05.2017 passed by learned Judicial Magistrate Ist Class, Hoshiarpur whereby, the court has declined the opportunity to the petitioner for cross-examining the CW.

In brief, the facts of the case are that marriage of the petitioner was solemnized with the respondent on 05.02.2013 at Village Nasrula, Tehsil and District Hoshiarpur, but the said marriage cannot survive the test of time, which resulted in registration of an FIR No.29 dated 12.03.2014, under Sections 409, 498-A of Indian Penal Code. It is alleged that the respondent-wife left the matrimonial home without permission of the petitioner-husband and moved false and frivolous complaints against the

petitioner as well as his other family members for the demand of dowry etc. just to harass the petitioner and his other family members. It is submitted that thereafter the respondent-wife filed a petition under Section 125 Cr.P.C. for grant of maintenance, in which after completion of the pleadings, efforts were made for reconciliation between the parties in Mediation Centre, but the same remained unsuccessful. During this period, the respondent tendered her affidavit in examination-in-chief and after return of the matter by the Mediation Centre, the case was fixed for 29.04.2017, on which date the case was adjourned for 11.05.2017 for evidence of the petitioner. On 11.05.2017 no CW was present, therefore, on the request of counsel for the respondent, the case was adjourned to 23.05.2017. Thereafter on 23.05.2017, CW was present for cross-examination, but CW could not be examined by the counsel for the petitioner on that date. The counsel for the petitioner made a request for granting further opportunity for cross-examining the CW, but the learned trial court declined further opportunity to cross-examine the CW and on that date itself, the respondent closed her evidence.

Learned counsel for the petitioner argued that it was neither intentional nor deliberate on the part of the petitioner as well as his counsel not to cross-examine the CW on the date fixed i.e. 23.05.2017. It is contended that it was due to circumstances beyond their control, the CW could not be cross-examined since the file had been misplaced in the office, which could not be traced despite best efforts. It is also contended that non cross-examination of the CW would have adverse impact over the entire

case of the petitioner, therefore, in the interest of justice one opportunity should be granted to the petitioner to cross-examine the CW.

I have heard learned counsel for the petitioner, apart from perusing the record.

By way of instant petition, the petitioner-husband is seeking quashing of the impugned order dated 23.05.2017 whereby, the learned trial court has declined the opportunity to the petitioner for cross-examining the CW. A perusal of the zimni orders appended with this petition goes on to show that on 29.04.2017, the petition was received by transfer by the learned trial court and a report from Mediation Centre was also received that the mediation remained unsuccessful and the case was adjourned for 11.05.2017 for making payment as well as evidence of petitioner. On 11.05.2017, payment of Rs.1500/- was made by the petitioner-husband in the account of the respondent-wife and receipts were also produced. Since no CW was present, on the request of counsel for the complainant, the case was adjourned to 23.05.2017 for CW. On 23.05.2017, CW was present and an opportunity was given to learned counsel for the petitioner to cross-examine the said witness, but he did not avail this opportunity and it was ordered that no further opportunity to be accorded to the petitioner. On that date itself, the respondent-wife closed her evidence and the case was fixed for evidence of petitioner-husband. It is the order dated 23.05.2017, which has been impugned in the present petition.

It is well settled proposition of law that the court should make every endeavour to decide the case on merits and reasonable opportunity

should be given to the parties to represent/set up their case by cross-examining the witnesses produced against him/her. In the case in hand, on 29.04.2017 the case was received from the Mediation Centre and on the next very date, no CW was present and therefore, the case was adjourned for 23.07.2017. On 23.07.2017, an adjournment was sought by counsel for the petitioner to cross-examine the CW, but that was declined. The reason put forth by counsel for the petitioner-husband not to cross-examine the CW on 23.05.2017 is that as the file was misplaced in the office and could not be traced, CW could not be examined on that date.

Keeping in view the facts and circumstances of the present case, this court is of the considered view that if one opportunity is granted to the petitioner to cross-examine the CW, no prejudice is going to be caused to the respondent except some delay, which can be compensated in terms of money. Therefore, at this stage, without commenting on the merits of the case, the instant petition is allowed and the impugned order dated 23.05.2017 is hereby set aside, subject to payment of Rs.5000/- as costs to be paid to the respondent-wife. It is directed that the petitioner-husband shall pay/deposit the costs of Rs.5000/- with the trial court within a period of three weeks from today and on his doing so, only one effective opportunity shall be given by the trial court to the petitioner to cross-examine the CW and if the petitioner-husband fails to cross-examine the CW on the said date, no further opportunity shall be given to the petitioner-husband for this purpose.

This order has been passed in the absence of the respondent-

wife, just to save time, money and other hardship of the respondent-wife to come to this court and contest this petition by engaging a lawyer. However, in case the respondent-wife has still any grievance against this order, she is at liberty to approach the Registry for listing of this case.

With the above observations, the petition is hereby allowed.

November 09, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No