

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

**CRM No.M-45198 of 2016(O&M)
Date of Decision: September 20, 2017**

Vipan Kumar

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manipal Singh Atwal, Advocate
for the petitioner.

Mr.Ajay Pal Singh Gill, DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Mangat Singh for quashing the orders dated 18.12.2015 and 22.08.2016 passed by learned Sub Divisional Judicial Magistrate, Dasuya.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that vide order dated 18.12.2015, learned trial court passed the order by treating the cross-examination of PW Mangat singh as 'Nil' as the defence counsel did not appear in the Court

despite repeated calls of the case. It is in the order that accused was repeatedly asked to bring learned defence counsel in the Court for the purpose of cross-examination of the witness, despite that fact, learned defence counsel has not turned up for cross-examining the above-said witness. On the same day, an application was filed for recalling the witness, which was also dismissed by the trial Court vide impugned order dated 22.08.2016.

After going through the record, especially the impugned orders, I find that PW Mangat Singh was examined-in-chief on 06.11.2015 and at the request of the defence counsel, cross-examination was deferred to 18.12.2015. On 18.12.2015, PW Mangat Singh was present for the purpose of cross-examination but counsel for the accused failed to appear in the Court till 2.30 P.M. and the cross-examination was ordered to be treated as 'Nil'.

Keeping in view the facts and circumstances of the present case, I find that if the witness is not recalled for cross-examination or the witness was not cross-examined, then the statement of the witness will be treated as un-challenged by the defence and the accused will suffer loss for the negligence, if any, of the Advocate. Therefore, in the interest of justice and to do substantial justice between the parties, this witness Mangat Singh should have been recalled. However, costs can be imposed and the harassment to the witness can be compensated.

In view of the above discussion, the petitioner is directed to deposit ₹10,000/- as costs with the trial Court payable to witness Mangat Singh. PW Mangat Singh be called for cross-examination after deposit of

the costs within reasonable time to be fixed by the trial Court and then only,

one effective opportunity be granted to the petitioner to cross-examine the witness. It is made clear that no further adjournment be given for the purpose of cross-examination.

Resultantly, present petition stands allowed accordingly.

September 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No