

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

C.R. No.2164 of 2018

Date of Decision.03.04.2018

Neeraja Chawla

.....Petitioner

Vs

Divas Chawla and another

.....Respondents

**CORAM:HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Kunal Dawar, Advocate  
for the petitioner.

-:-

**AMIT RAWAL J.(ORAL)**

The present revision petition is directed against the impugned order dated 22.03.2018 (Annexure P-1) whereby an application submitted by respondent No.1-husband before the Family Court in divorce petition for summoning respondent No.2, herein, as well as in the divorce petition, the alleged paramour of petitioner-wife herein and respondent No.1 in the divorce petition for the purpose of adjudication of the *lis*, has been allowed.

Mr. Kunal Dawar, learned counsel appearing on behalf of the petitioner submitted that the respondent No.1-husband has filed the divorce petition under Section 13 of the Hindu Marriage Act seeking divorce on two counts namely (i) cruelty and (ii) adultery, by impleading Sandeep Mohan Razdan, the alleged paramour as respondent No.2. Respondent No.2 appeared and filed the written statement and the divorce petition continued to proceed as per the issues framed in accordance with law. The respondent No.1-petitioner's evidence was closed on 19.12.2016. However, when the matter was posted for the respondents' evidence i.e. petitioner-wife herein and respondent No.2, both the parties filed their respective affidavit but the alleged paramour prayed that he would cross-examine the petitioner-wife.

However, when evidence of the petitioner-wife was closed on 22.02.2018, respondent No.2 was proceeded ex parte on 13.03.2018. As a result thereof, the husband moved application dated 17.03.2018 (Annexure P-4) for summoning respondent No.2 as witness for the purpose of adjudication of *lis*. The reason assigned in the application was to confront some affidavit executed by respondent No.2 with regard to alleged adulterous life. The aforementioned application has erroneously been allowed as there is no rebuttal issue. At the best, if the husband had any apprehension that respondent No.2 would become ex parte, he could have summoned him as his own witness, for, there appears to be an apparent collusion between the husband and respondent No.2 as the written statement filed by him had opposed the divorce petition.

He next contended that respondent No.2 had opposed the divorce petition or the alleged adulterous life between the petitioner and him by filing the written statement but the present application is outcome of collusion between the husband and respondent No.2 and therefore, there is apprehension that he may divulge against the interest of the petitioner. In such situation, wife should be granted an opportunity to cross-examine the witness. The power exercised under Order 16 Rule 21 CPC in the manner and mode is not permissible in law. In support of this contention, he relied upon the judgment rendered by Bombay High Court in **Pirgonda Hongonda Vs. Vishwanath Ganesh and others AIR 1956 (Bombay) 251** and Karnataka High Court in **M/s Kirthi Constructions Vs. K. Thippa Reddy (Karnataka) 2014 (62) RCR (Civil) 518**, thus, urges this Court for setting aside the order under challenge.

I have heard learned counsel for the petitioner and appraised

the paper book. The facts narrated by Mr. Kunal Daward as well as the facts emanated from the revision petition and the grounds taken in the divorce petition, much less, the impleadment of respondent No.2 are not in dispute. The only question which has to be considered is whether the application (Annexure P-4) at the instance of the husband for summoning respondent No.2, who had proceeded ex parte on 13.03.2018 was maintainable or not. Order 16 Rule 21 of the Code of Civil Procedure envisages the said position. For the sake of brevity the same is reproduced herein below:-

***“21. Rules as to witnesses to apply to parties summoned.-***

*Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.”*

It is a matter of record that respondent No.2 had filed affidavit in examination-in-chief but the cross-examination was not conducted at the instance of the husband as he wanted to cross-examine the wife. The cross-examination of the wife was closed on 22.02.2018. The argument of Mr. Dawar that the trial Court could not have permitted for summoning the witness in the absence of any rebuttal issue is wholly misplaced, as the husband was expecting that respondent No.2 would now appear for cross-examination but to his bad luck, he proceeded ex parte. It would have been a collusion between the husband and respondent No.2 but I would be refraining myself from commenting upon the aforementioned fact as it would be a matter of evidence but the fact of the matter is that the Court has rightly permitted the petitioner-husband in the divorce petition to summon the witness as there are certain documents referred to in the application to

be confronted to respondent No.2.

Though the impugned order under challenge does not specify that the wife-respondent No.1 in the divorce petition will not have opportunity of cross-examination but if there has been any clash of interest in the cross-examination, she cannot be denied right of cross-examination.,

There is no dispute to the ratio decidendi referred to supra but all these judgments are on different facts as noticed above *vis-a-vis* the facts in the present case.

With the aforementioned observations, while upholding the order under challenge, the revision petition stands disposed of.

(AMIT RAWAL)  
JUDGE

April 03, 2018  
Pankaj\*

Whether reasoned/speaking      Yes

Whether reportable                      Yes