

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8758 of 2017 (O&M)
Date of Decision:23.02.2018

Neeraj Kalra

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr.Ajay Paul Singh, Advocate
for the petitioner.

Ms. Monika Jalota, DAG, Punjab.

LISA GILL, J(Oral).

Prayer in this petition is for quashing of order dated 30.01.2017, passed by learned Judicial Magistrate Ist Class, Abohar, vide which cross-examination of AW-1-Poonam and AW-2-Deepak, has been treated as nil.

Respondent no.2, wife of the petitioner filed a petition under the Protection of Women from Domestic Violence Act 2005. Notice was issued to the petitioner and the proceedings were in progress. Two of the witnesses i.e. AW-1-Poonam (the complainant) and AW-2-Deepak (complainant's brother) could not be cross-examined on 30.01.2017 as the petitioner's counsel was in difficulty. The learned trial Court vide order dated 30.01.2017 treated the cross-examination of the said witnesses as nil despite opportunity. Aggrieved therefrom, the present petition has been filed.

Vide impugned order dated 30.01.2017, it is mentioned that the said witnesses were present but the counsel for the respondent did not turn

up despite the case being called several times. Cost of ₹500/- which was earlier imposed on 10.11.2016, was not paid. In this view of the matter, cross-examination of the said witnesses was treated as nil and thereafter, evidence of the applicant was closed vide a separately recorded statement.

Learned counsel for the petitioner submits that in-fact no witness was present in Court on the said date as mentioned in a separate order of even date available on page no.31 of this petition. Both AW-1 and AW-2, it is stated are material witnesses and in case opportunity to cross-examine them is denied to the petitioner, manifest injustice shall be caused to him.

Learned counsel for respondent no.2 fairly states that he has no objection, if one opportunity be afforded to the petitioner to cross-examine the said witnesses subject to deposit of cost. He has however refuted the fact that no witness was present on 30.01.2017 and argues that presence of the said witnesses is clearly mentioned in the impugned order dated 30.01.2017 (Annexure P-1). Thus, it is probably due to some mistake/typographical error that it is noted in the order at page 31 of this petition that no witness on behalf of the applicant is present.

I have heard learned counsel for the parties.

It is not in dispute that cost of ₹500/- imposed vide order dated 10.11.2016 passed by the learned trial Court was never deposited. It is indeed mentioned in the impugned order dated 30.01.2017 that the witnesses Poonam and Deepak were present in the Court.

Be that as it may, keeping in view the stand of learned counsel for respondent no.2, this petition is allowed. Impugned order dated 30.01.2017, is set aside and it is directed that one effective opportunity be afforded to the petitioner to cross-examine the said witnesses subject to

deposit of ₹10,000/- as costs to be paid to respondent no.2.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

23.02.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.