

CR No.121 of 2019

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

CR No.121 of 2019
Date of Decision : 11.02.2019

Narender Sharma

...Petitioner

Versus

Bharat Bhushan and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Bikram Chaudhary, Advocate for the petitioner.
Mr. Amit Parshar, Advocate for respondent No.1.

B.S.WALIA, J. (Oral)

1. Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 04.12.2017, passed by the learned Civil Judge (Junior Division), Faridabad, vide which the cross-examination of PW1 and PW-2 was ordered to be treated as nil with a prayer for setting aside the same and for granting one opportunity for cross-examination of PW-1 and PW-2.

2. Learned counsel for the petitioner contended that the counsel representing the petitioner-defendant before the learned trial Court could not cross-examine the PWs in the morning on 04.12.2017 and had requested for a pass over for their cross-examination and even after lunch, counsel for the petitioner-defendant was busy in the court of Ms. Kimmi Singla, learned Judicial Magistrate 1st Class, Faridabad, in case titled State vs. Sarita etc., FIR No.200 of 2015, U/s 420, 467, 468, 471, 120-B of IPC, P.S. Sadar Ballabgarh and on that day, counsel for the petitioner-defendant had cross-examined witness (PW-5 Udaiveer) in the aforesaid case at

length i.e. running into ten pages but since cross-examination was not being concluded, the counsel for the petitioner-defendant could not conduct the cross-examination of the witnesses in the instant case and accordingly made a request for adjournment for a short date but the same was not acceded to though there were justifiable reasons for acceding to the request. Learned counsel states that one opportunity be granted to the petitioner-defendant to cross-examine PW-1 and PW-2, failing which, grave prejudice would be caused to the petitioner-defendant.

3. Per contra, learned counsel for respondent No.1 contended that the petitioner-defendant had availed numerous opportunity to cross-examine the aforesaid witnesses but had failed to do the needful, therefore, the order passed by the learned trial Court was in accordance with law and did not warrant any interference.

4. I have considered the submissions of ld.counsel for the parties.

5. A perusal of the impugned order reveals that the learned counsel for the petitioner-defendant got passed over the case for after lunch for cross-examination of PW-1 and PW-2 and again at 01:35 p.m., counsel for the petitioner-defendant requested for pass over till 2:25 p.m., as he was busy in some other court, whereupon he was warned that heavy cost would be imposed if he failed to conclude the evidence on the said date. However, at 2:25 p.m., counsel for the petitioner-defendant sought an adjournment by stating that he could not cross-examine the witnesses on said date, whereupon the learned trial Court concluded that the petitioner-defendant was deliberately and intentionally delaying the proceedings and creating mockery of the court proceedings. Accordingly, finding no ground to

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adjourn the case any further, opportunity given to the petitioner-defendant to cross-examine the witnesses was treated as nil.

6. A perusal of the impugned order reveals that the learned trial Court while passing over the matter at 1:35 p.m. had warned counsel for the petitioner-defendant that heavy costs would be imposed if he failed to cross-examine the witnesses on that day. However, learned counsel for the respondent has not disputed that counsel for the petitioner-defendant was busy on said date in cross-examination in another case in the Court of the learned JMIC, Faridabad as also of the counsel having been warned that in case he did not conclude the evidence on the said date, heavy costs would be imposed on him. In the circumstances, it would be in the interest of justice, if one opportunity is granted to allow cross-examination of the witnesses as counsel for the petitioner-defendant was prevented by sufficient cause from cross-examining the witnesses on the date of the passing of the impugned order on account of being busy in the court of the learned JMIC, Faridabad, in case titled 'State vs. Sarita etc., FIR No.200 of 2015, U/s 420, 467, 468, 471, 120-B of IPC, P.S. Sadar Ballabgarh. Accordingly, the impugned order is set aside and one effective opportunity is granted to the petitioner-defendant to cross-examine the witnesses on a date to be fixed by the learned trial Court, subject to payment of costs of ₹10,000/- to respondent No.1.

7. Revision petition allowed in aforementioned terms.

(B.S.WALIA)
JUDGE

11.02.2019.

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No