

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

**CRR No. 359 of 2019
Date of decision: 15.02.2019**

Kamlesh Sharma

...Petitioner

Versus

M/s IndusInd Bank Ltd. and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Diksha Verma, Advocate
for the petitioner

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 19.01.2019, vide which, an application filed by the petitioner under Section 311 Cr.P.C., for recalling CW-1 i.e. complainant for cross-examination, was dismissed by the trial Court.

Learned counsel for the petitioner submits that counsel for the petitioner could not cross-examine CW-1/complainant on account of the fact that petitioner could not appear before the trial Court on the date when the case was fixed for cross-examination of the said witness.

A perusal of the impugned order shows that on 22.1.2018, an affidavit of CW-1 was tendered and thereafter, the case was adjourned for number of times for cross-examination of CW-1 and on 15.01.2019, neither the accused/petitioner nor his counsel was present, however, the Clerk of the counsel of the petitioner was directed to call the counsel to complete the cross-examination and thereafter, the cross-examination of this witness was treated as nil.

Learned counsel for the petitioner submits that due to some

unavoidable circumstances, the petitioner could not appear before the trial Court and seeks only one opportunity for completing the cross-examination of CW-1.

After hearing learned counsel for the petitioner, I deem it appropriate to dispose of the present petition at this stage as in case notice is issued to respondents, it will further delay the proceedings.

Therefore, in view of the submissions made by learned counsel for the petitioner and also for the reasons stated in the petition, the same is allowed and impugned order dated 19.01.2019 is set aside.

The trial Court is directed to grant one effective opportunity to the petitioner to complete the cross-examination of CW-1/complainant. However, this will be subject to payment of ₹5,000/- to the respondent/complainant.

It is made clear that in case the complainant is present in Court and the petitioner fails to complete the cross-examination, it will be open for the trial Court to treat his cross-examination 'nil' as it was done on 15.01.2019.

February 15, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No