

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1039 of 2019

Date of Decision: 13.02.2019

Man Singh

.....Petitioner

Vs.

Veer Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Chetan Kapoor, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the orders of the learned trial Court [Civil Judge (Junior Division), Rajpura], dated 04.01.2019 and 21.01.2019, by the first of which cross-examination of PW-1, Veer Kaur, was ordered to be treated as 'Nil' as sufficient opportunities had been granted to the defendant to cross-examine the said witness; and the 2nd order (dated 21.01.2019) being one by which the application filed by the petitioner seeking that the order dated 04.01.2019 be recalled, has been dismissed, holding that the reasons given seeking recalling of the order were no different for the reasons given for non-examination of the cross witness at the time when the order dated 04.01.2019 had been passed.

Coming back to the order dated 04.01.2019, the reasoning of the trial Court given therein, is to the effect that the said witness, Veer Kaur, had been regularly appearing before it since 27.08.2018, when her examination-in-chief having been conducted but with her cross-examination deferred on the request of

counsel for the petitioner, i.e. the defendant. On 02.11.2018 the witness again appeared but could not be examined as the counsel assisting the 'main counsel' for the petitioner submitted that he could not appear on account of elections to the Bar Council.

Thereafter, the witness again appeared before the trial Court on 03.12.2018 but was again not cross-examined, leading to costs of Rs. 1,500/- being imposed upon the petitioner-defendant, with it also made clear that a last and final opportunity was granted to conduct the cross-examination.

Thereafter, the cross-examination still not having been conducted on 04.01.2019, on the ground that the Bar Association was observing a “no work day” in protest against the establishment of Family Courts at the District level, the said reason was held to be no valid reason for non-appearance of the counsel for the petitioner-defendant and for not cross-examining the witness and consequently, the the impugned order was passed, with the trial Court citing a judgment of the Supreme Court in Hussain and another vs. Union of India (2017) 5 SCC 702, to hold that the act of suspending work by Advocates is illegal.

Learned counsel for the petitioner submits that the petitioner should not suffer due to the fault of counsel and therefore, only one final opportunity be given to conduct the cross-examination of the aforesaid witness, i.e. PW-1 Veer Kaur.

Having considered the aforesaid contention, though I fully agree with the reasoning given by the trial Court in the impugned order, which cannot be faulted in any manner whatsoever, however, the litigant should not suffer on account of the fault of his counsel.

Consequently, while further imposing the costs of Rs. 1,500/-, to be paid by counsel for the petitioner before the trial Court, i.e. the counsel who did

not conduct the cross-examination, the petition is allowed, with the petitioner given one opportunity to cross-examine the aforesaid witness before the trial Court, with the impugned orders therefore set aside to that extent, subject to the payment of costs; with the cross-examination of the witness to be conducted on the next date of hearing before the trial Court, which is stated to be 25.02.2019 (as is seen from the order dated 21.01.2019).

It is obviously to be stated here that this petition has been allowed without even issuing notice to the respondents, in view of the fact that no progress in the trial has taken place after the impugned orders were passed and in any case, it has been allowed subject to payment of further costs of Rs. 1,500/-, other than what was already ordered to be paid on a previous date by the trial Court.

February 13, 2019
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.