

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

CRR No.616 of 2019.

Decided on:- December 13, 2019.

Balwinder Kaur and others

.....Petitioners.

Versus

Mayank Sharma.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Gurnam Singh, Advocate
for the petitioners.

Ms. Amanpreet Kaur Sabharwal, Advocate for
Mr. Siddharth Gupta, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

The petitioners have filed this revision petition against the order dated 04.02.2019 passed by learned Sub-Divisional Judicial Magistrate, Dera Bassi, District SAS Nagar, whereby the application filed by petitioner-wife Balwinder Kaur to recall the order dated 11.12.2017, was dismissed. Vide order dated 11.12.2017, the learned trial Court has closed the evidence by order and had adjourned the case for 04.01.2018 for evidence of respondents.

Briefly stated, the petitioners, who are the wife and minor children of the respondent, have filed a petition under Section 125 Cr.PC so as to claim maintenance from the respondent being legally wedded wife and

children. The matter was listed before learned Magistrate on 11.12.2017 and the following order was passed:

“No witness is present today for concluding the evidence inspite of last opportunity. From perusal of the judicial file it reveals that petitioner has availed numerous opportunities as well as subject to last opportunity to conclude its evidence but petitioner has failed to conclude to do so. Hence, finding no justification to grant for further adjournment, the evidence of petitioner is closed by order. Now case is adjourned to 04.01.2018 for evidence of respondent. Copy of the affidavit of the witness, if any, be supplied in advance to the opposite counsel against proper receipt.”

Learned counsel for the petitioners has argued that the parties have matrimonial dispute and two different cases i.e. one under the Domestic Violence Act and another under Section 125 Cr.PC were pending consideration before learned Magistrate. Both the cases usually used to be fixed on one common date and the cases were lastly adjourned to 10.11.2017. However, on that date, the case under Section 125 Cr.PC was adjourned to 11.12.2017, whereas the case under the Domestic Violence Act was fixed for 15.12.2017 but the petitioner misread the date. In this manner, there was a confusion with the petitioner-wife, which led to passing of the order dated 11.12.2017 by learned Magistrate in the petition under Section 125 Cr.P.C.

Learned counsel for the petitioners states that it is under the bona fide mistake, the petitioner-wife could not lead her evidence on 11.12.2017 as she had noted wrong date. He confines his prayer to the extent that in case one opportunity is granted to the petitioner, she undertakes to conclude her evidence on one effective date.

Learned counsel for the respondent has contended that despite having availed numerous opportunities, the petitioner-wife has not produced her evidence and in this manner, the petitioner has tried to delay the proceedings as the petitioner is already enjoying the interim maintenance. In this manner, the petitioner is intentionally delaying the proceedings and she is not entitled for any other opportunity.

I have heard learned counsel for the parties.

It has not been disputed that there are two different cases pending between the parties as indicated above and on 11.12.2017, learned Magistrate had passed the order in petition under Section 125 Cr.PC, whereby the evidence of the petitioner-wife was closed and the case was adjourned for recording evidence of the respondent-husband. However, after passing of the order dated 11.12.2017, no witness has been examined in the case. In this manner, no serious prejudice would be caused to the respondent except that he has to appear before the trial Court again.

Therefore, considering the nature of dispute between the petitioner-wife and the respondent-husband and the limited prayer of learned counsel for the petitioner, one more opportunity is granted to the petitioner-wife to conclude her evidence.

Accordingly, the order dated 11.12.2017, whereby evidence of the petitioner-wife was closed and the subsequent order dated 04.02.2019, seeking recall of the order dated 11.12.2017 was dismissed, are hereby set aside. The petitioner is granted one effective opportunity to lead her evidence. In case the petitioner fails to conclude her evidence in one effective

opportunity, the trial Court shall be at liberty to proceed in accordance with law.

The petition stands allowed in these terms.

December 13, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No