128.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36937-2019
Date of decision: 03.09.2019

PREM PARKASH ... Petitioner

versus

REETA AND ANR .... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Harsh Chopra, Advocate,
for the petitioner.

HARI PAL VERMA, J.*(Oral)*

Prayer in this petition filed under Section 482 Cr.P.C. is to set aside the order dated 01.06.2019 (Annexure P-1) passed by learned Sub Divisional Judicial Magistrate, Nangal, whereby for non-cross examining the AWs-Reeta and Ram Karan, their cross-examination was treated as 'Nil'.

Counsel for the petitioner has drawn attention of this Court to the order dated 08.02.2019 to contend that on 08.02.2019 though AW2-Ram Karan had come present in the Court and tendered his evidence by way of duly sworn affidavit Ex.AW-2/A, but his cross-examination was deferred on request of counsel for the petitioner herein. The case was adjourned to 15.02.2019. On 15.02.2019, no AW was present and, therefore, no cross-examination of AW2-Ram Karan could be conducted. The case was adjourned to 01.03.2019. Similarly, on 01.03.2019, no AW was present and the case was adjourned for 20.04.2019. Even on 20.04.2019, though AW Ram Karan was present, but he could not be cross-examined and the case

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was adjourned to 01.06.2019. On 01.06.2019, the impugned order has been passed.

Counsel for the petitioner has referred to the zimni order dated 20.04.2019 wherein it has been recorded that AW Ram Karan though was present, but he could not be cross-examined. Thus, the non-cross examination of said witness AW Ram Karan was not because of counsel for the petitioner, rather the court at its own had adjourned the case for 01.06.2019. However, on 01.06.2019, when the impugned order was passed, counsel for the petitioner could not cross-examine the AWs-Reeta and Ram Karan, as the petitioner-Prem Parkash was not feeling well and in this regard, he has produced his medical record (Annexure P-2).

I have heard counsel for the petitioner.

After having perused various zimni orders attached with this petition and taking into consideration the submission made by the counsel for the petitioner that no AW has been examined in the case and in this manner, the trial is still at an initial stage, the impugned order dated 01.06.2019 (Annexure P-1) is set aside, but with one opportunity to the petitioner to cross-examine the AWs, as referred in the order dated 01.06.2019, namely, Reeta and Ram Karan.

Counsel for the petitioner undertakes that he will complete his cross-examination in one effective opportunity.

Though the present order should have been passed after issuing notice to the respondent, but taking into consideration that it will further delay the proceedings and the various orders passed by the learned Magistrate, one more effective opportunity is granted to the petitioner to

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cross-examine the witnesses, however, that would be subject to payment of costs of Rs.10,000/- to be paid to the respondents before the start of cross-examination of Reeta and Ram Karan.

Disposed of.

(HARI PAL VERMA)
JUDGE

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Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No

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