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

CRR-780-2022 (O&M)
Date of decision: 03.08.2022

M/S KANHEYA MEDICAL AGENCY

...Petitioner

Versus

PYARE LAL

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Gulshan Mehta, Advocate
for the petitioner.

Mr. Vishavjeet Advocate for
Mr. Jitender K. Sehrawat, Advocate
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

1. After conclusion of proceedings drawn under Section 313 of Cr.P.C., upon the petition complaint, the accused-petitioner herein asked for leave, being granted, for re-calling PW-1, for further cross-examination, being made upon him. PW-1 is the complainant in the petition complaint. However, the jurisdictionally empowered Magistrate through an order drawn thereons, on 15.02.2022, declined the above leave, to the petitioner herein.

2. The reason as set forth in the impugned order, is embodied in paragraph 5 thereof, paragraph whereof becomes extracted hereinafter.

“5. Vide the present application, the applicant/accused sought an opportunity to recall complainant Pyare Lal, who was earlier examined as PW-1, for further cross-examination on the ground that previously when PW-1 Pyare Lal was cross-examined by learned counsel for applicant/accused, the brother of the applicant/accused was suffering COVID-19 and he was disturbed due to ailment of his brother and that is why he could not explain complete facts and his defence to his counsel, due to this reason,

the counsel for the applicant/accused could not cross-examine PW-1 effectively regarding the business, investment etc., so, he wants to recall the complainant to conduct his re-cross-examination on some material questions regarding the above said case.

Perusal of the case file shows that cross-examination of the complainant was conducted on 18.02.2020 by learned counsel for the accused in detail and thereafter, the accused has led his defence in which he examined five witnesses and now after approximately two years, he is seeking an opportunity to again cross-examine the complainant on the ground of medical condition of his brother. However, except bald averments no supporting document/medical report etc. has been placed on record by the applicant/accused. Even otherwise presence of the accused in the Court on the date of cross-examination of the complainant was sufficient to establish the fact that he had given all necessary instructions to his counsel to conduct cross-examination of the complainant. This application is an abuse of process having been filed only to fill in the lacunae and to delay the trial of the case.”

3. The stage, at which the above leave is asked for, is extremely important, for adjudging whether the application, at hand, deserved its being allowed or being dismissed.

4. Since as above stated, the application at hand, became instituted after conclusion of the proceedings drawn under Section 313 of Cr.P.C., thereupon any omissions on the part of the learned defence counsel, to earlier mete any exculpatory suggestions to PW-1, rather cannot be condoned. The belated stage of filing of the instant application, is *per-se* amplificatory of it being a sequel, of invention, and, premeditation, and, if so, the above endeavour was required to be declined, as aptly done by the learned trial Judge concerned.

5. Though, the empowerment vested in the learned trial Judge concerned, to permit the re-stepping into the witness box of any witness for his being re-cross-examined, is of the widest plenitude, but yet its exercising has to

be done with the most extreme care, and, caution, but bearing in mind the stage of the institution of the application. However, as above stated the application was belatedly cast, and, obviously required its being dismissed, as omissions, to earlier put certain exculpatory suggestions to PW-1, could be undone rather through firm documentary evidence being asked to be adduced, rather than through the above mode, which would ultimately result in proof, if any, adduced in respect of the notice of accusation, by the PW-1, in his examination-in-chief, becoming untenably attempted to, become scuttled, by the belated attempt of the accused.

6. Therefore, the further consequence thereof is that, it is the duty of the learned Courts concerned, to give equal opportunities to the complainant, and, to the accused rather for the relevant purpose. Moreover, even if, at a belated stage of the trial, any further cross-examination is required to be done, upon any prosecution witness, yet the necessity thereof is required to be well-founded, upon firm documentary material subsequently emerging, and, not as above stated, for curing earlier omissions, on the part of the learned defence counsel, and, which as above stated are sheer inventions, and, afterthoughts.

7. Hence, the petition is dismissed. Liberty reserved to adduce the relevant evidence, as a defence witness.

8. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

03.08.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No