

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

CRR-1954-2022

Date of Decision: 27.9.2022

Shiv Charan Bhardwaj

... Petitioner

Versus

M/s Amba Bhatta Company and another

... Respondents

CORAM:-HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Ajaivir Singh, Advocate for the petitioner

...

This revision petition has been filed by the petitioner challenging the order dated 12.9.2022 (Annexure P-1) passed by the trial court whereby the application for recall of witness for further examination has been dismissed.

It is the case of the petitioner that CW1-Rajesh Sharma was cross-examined by him on 26.8.2022 in the absence of accused as application for exemption from personal appearance of accused was moved and on pressing upon by the trial court to cross-examine the witness, he was cross-examined and he could not ask some questions to CW1 qua account statements and delivery of notice which is necessary for just decision of the case. Therefore, the petitioner filed application for recall of CW1 for further cross-examination. Learned counsel for the petitioner submits that cross-examination of CW-1 is required for just decision of the case. In support of his submission,

learned counsel relies on the judgments of the Hon'ble Supreme Court in case **Mannan Sk. and others vs. State of West Bengal and another, 2014 (13) SCC 59** and a judgment of this Court in **Khatta Singh vs. CBI Chandigarh and others, 2018(3) RCR (Criminal) 708**.

Per contra, the complainant opposed the aforesaid application of the petitioner on the ground that CW1 was cross-examined at length and the questions qua delivery of notice was duly asked to CW1. Further more on 31.8.2022, another witness was examined by the complainant as CW2, but no such prayer was made by the accused. It is the case of the complainant that the accused is trying to delay the matter on one pretext or the other.

I have heard learned counsel for the petitioner and perused the paper-book.

A perusal of the record shows that on 26.8.2022, the witness of the complainant was present and counsel for accused moved application for exemption of personal appearance of accused and as per para 3 of the application wherein it has been stated that the accused has no objection if the evidence is recorded in his absence, and therefore, no question of pressing upon the counsel for accused to cross-examine the witnesses arises. Moreover, CW1 was cross-examined at length and even the questions relating to delivery of legal notice were also asked which is apparent from page no.4 of the cross-examination and moreover, if it was the case, then the counsel for accused could have deferred the cross-examination for assistance of the accused for further cross-examination of CW-1. After completion of cross-examination of CW1, the case was adjourned for further

evidence of the complainant for 31.8.2022 and on 31.8.2022, cross-examination of CW-2 was conducted and statement of accused under Section 313 Cr.P.C. was recorded and the case was adjourned for 5.9.2022 for defence evidence when the application for exemption from personal appearance of accused was moved and the case was then adjourned by the trial court for 12.9.2022 when the present application for cross-examination has been moved.

From the above discussions, it is apparent that the petitioner has been given ample opportunity to cross-examine CW-1 and the petitioner cannot be allowed to adopt dilatory tactics to delay the trial. The judgments relied upon by the counsel for the petitioner are not applicable to the peculiar facts and circumstances of the present case.

It is well settled law that a party is supposed to pursue its case with due diligence and a party cannot be allowed to take advantage of his own wrong/negligence. The Hon'ble Supreme Court in **Mangal Singh vs. Kishan Singh, (2009) 17 SCC 303** has held as under:-

“14. ... But it will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore, no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.”

For the reasons recorded above, I find no illegality or perversity in the impugned order dated 12.9.2022 (Annexure P-1)

passed by the trial court which calls for no interference by this Court in exercise of its discretionary jurisdiction under Section 482 of the Cr.P.C.

Dismissed.

(ASHOK KUMAR VERMA)
JUDGE

27.9.2022
MFK

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>