

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(281)

CR No. 2238 of 2023

Date of Decision : 03.05.2023

Balwinder Singh

...Petitioner

Versus

Mohan Lal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Ishan Gupta, Advocate for the petitioner.

Mr. Ashok Sharma, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

The present civil revision petition has been filed by the petitioner-defendant challenging the order dated 23.03.2023 (Annexure P-1) by which, the trial court has discarded the affidavit dated 05.02.2023/08.02.2023 i.e. Ex. DW1/A tendered by the petitioner after the re-examination of PW2-Sukhdev Singh.

Learned counsel for the petitioner submits that when initially, affidavit by way of examination-in-chief was tendered by the petitioner on 31.10.2022, the defence evidence had already started but thereafter, an application was moved for recalling PW2-Sukhdev Singh to be cross-examined again, which application was allowed and after the cross-examination of the said witness, a fresh affidavit by way of examination-in-chief was tendered on 05.02.2023/08.02.2023, which affidavit has not been accepted by the court below on the ground that only the first affidavit given

on 31.10.2022 will be allowed to operate as examination-in-chief. Learned counsel submits that once certain facts had come into being after the fresh cross-examination of PW2, which needed to be controverted by way of affidavit to be filed in examination-in-chief, the affidavit given in examination-in-chief on 05.02.2023/08.02.2023 should have been allowed to be brought on record as the same will not cause any prejudice to any side.

Learned counsel appearing on behalf of the respondent, on the other hand, submits that once an affidavit had already been tendered as examination-in-chief on 31.10.2022, the same could not be withdrawn without any valid justification and the order passed by the trial court not allowing to bring on record the subsequent affidavit dated 05.02.2023/08.02.2023 of petitioner-Balwinder Singh in examination-in-chief is perfectly valid and legal.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the facts and circumstances of the present case, once after the furnishing of the affidavit by way of examination-in-chief on 31.10.2022, PW2-Sukhdev Singh was recalled to be cross-examined. It was within the right of the petitioner-Balwinder Singh to cover whatever Sukhdev Singh had submitted in his cross-examination by filing a fresh affidavit submitted by petitioner-Balwinder Singh to be treated as examination-in-chief. No illegality in the said act has been mentioned by the trial court while rejecting the affidavit dated 05/08.02.2023.

In the facts and circumstances of the present case, the petitioner-defendant was well within his rights to submit a fresh affidavit to

be treated as examination-in-chief, which was submitted on 05.02.2023/08.02.2023, be taken on record to be treated as examination-in-chief of the petitioner and the trial court is directed to proceed further in the matter in accordance with law after giving due opportunity to the respondent to rebut the said affidavit on all possible objections including any fact mentioned in the earlier affidavit.

Civil revision petition is allowed in above terms.

May 03, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No