

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-37879-2023 (O&M)
Date of Decision : 07.08.2023

SarikaPetitioner

VERSUS

State of PunjabRespondent

CORAM : HON’BLE MRS. JUSTICE ALKA SARIN

Present : Mr. G.S. Madaan, Advocate for the petitioner.

Mr. Adhiraj Singh, AAG Punjab.

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ALKA SARIN, J. (Oral)

1. This is a petition filed under Section 482 of the Code of Criminal Procedure, 1973 challenging order dated 20.07.2023 (Annexure P-5) in FIR No.23 dated 18.04.2022 registered under Section 376 IPC at Police Station Women Cell, Jalandhar, whereby the cross-examination of the prosecutrix and her mother has been closed.
2. Learned counsel for the petitioner would contend that the prosecutrix could not appear for her cross-examination due to her ill health and that if given one opportunity, she and her mother would present themselves for cross-examination.
3. I have heard learned counsel for the petitioner.

4. In the present case it has been noticed in the impugned order dated 20.07.2023 that on the said date neither the prosecutrix nor her mother came present. However, they filed an application seeking exemption from her appearance on the ground that she is suffering from viral fever and vomiting and thus unable to attend that Court. However, there was no medical appended with the application for exemption from personal appearance. The Court has also noted that there is no reason coming forth as to why the mother of the prosecutrix did not come forward for her cross-examination.

5. The statement of the prosecutrix was recorded partly on 14.03.2023. Thereafter, the prosecutrix filed an application under Section 319 CrPC which was disposed off as dismissed on 13.04.2023. Thereafter the prosecutrix failed to turn up for her remaining cross-examination on 19.04.2023, 26.04.2023, 03.05.2023 and on 09.05.2023 when she came present, an adjournment was sought on her behalf on the ground of filing of a revision petition before this Court against the order dated 13.04.2023. The request was declined and the complainant was directed to present herself for recording of remaining cross-examination which was recorded partly till 1.00 PM. The cross-examination thereafter was deferred to post lunch session. Post lunch, the prosecutrix did not come present. However, an application was filed by her counsel that she was not feeling well due to low blood pressure. Even on 11.05.2023 the prosecutrix did not turn up and the case was adjourned to 15.05.2023. In the meanwhile, the prosecutrix filed a transfer application which was dismissed by the Sessions Judge on

11.05.2023 wherein her personal presence has been marked indicating thereby that the prosecutrix was very much present in the Court complex on 11.05.2023. However, she intentionally did not come forward for recording of her remaining cross-examination on 11.05.2023. On 15.05.2023 the prosecutrix did not turn up and the case was adjourned to 22.05.2023. The notice issued to her mother and father was received back served but neither the prosecutrix herself nor either of her parents came forward and were then summoned throughailable warrants. On 29.05.2023 the prosecutrix appeared along with her parents when the examination-in-chief of her mother was recorded but cross-examination could not be conducted as the defence counsel was stated to be out of station. Again on 06.07.2023 neither the prosecutrix nor her mother came present despite the fact that they were bound down for the purpose. On 13.07.2023 also the prosecutrix failed to turn up despite service throughailable warrants and although the prosecutrix herself was present in the Court she also failed to step into the witness box and an application was filed seeking exemption citing the reason that the prosecutrix was suffering from fever and her mother was also suffering from fever and foot ache but no medical certificate was attached to the said application. This was the conduct despite last opportunity being given by the Court for presenting themselves on previous date. Even on the date of passing of the impugned order i.e. on 20.07.2023, neither the prosecutrix nor her mother appeared and an application was filed to defer the cross-examination which was declined by the Court.

6. Though in the present case the petitioner and her mother seem to be intentionally not presenting themselves before the Court for their cross-examination and have been delaying the entire trial and wasting the precious time of the Court, however, keeping in view the nature of the litigation one final opportunity is granted to the petitioner and her mother to present themselves for cross-examination on the next date i.e. 10.08.2023.

7. It is made clear that no further opportunity shall be granted whatsoever and in case the petitioner and her mother do not present themselves on the adjourned date i.e 10.08.2023 for recording of their cross-examination, the present petition shall be deemed to be dismissed. It is also made clear the no application for exemption from appearance on any ground shall be entertained on the said date.

8. In view of the above the present petition is disposed off. Pending applications, if any, also stand disposed off.

August 07, 2023
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO