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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-53395-2023 (O&M)
DATE OF DECISION :19.10.2023

PUNEET JAIN AND ANOTHER

...PETITIONERS

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM : HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr.Sushant Kareer, Advocate
for the petitioners.

Mr. Himani Arora, AAG, Punjab,
For respondent no.1.

MANISHA BATRA, J,(ORAL)

The petitioners who are facing trial as accused in case bearing No.SC/1365/2021, titled as "State vs. Puneet Jain and another" before the Court of learned Additional Sessions Judge, Special Court, Ludhiana, have filed this petition making prayer to set aside the order dated 09.08.2023 (Annexure P-6) whereby opportunity to cross-examine two witnesses i.e., PW-2-Anika Jain and PW-4 prosecutrix (name withheld) was closed by learned trial Court as against the petitioners.

2. As submitted, these two witnesses had appeared for recording their respective sworn depositions before the trial Court on 08.08.2023. Examination-in-chief of the PW-4 prosecutrix was recorded but on account of non-availability of the counsel for the petitioners their cross-examination could not be conducted and the matter had been adjourned to 09.08.2023. As their counsel could not appear even on that date therefore, the learned trial Court had adjourned the case

to 24.08.2023 by treating the cross-examination of the above name witnesses as 'Nil'.

3. Learned counsel for petitioners has submitted that by closing their right to cross-examine the above two material witnesses, a great prejudice has been caused to them. Therefore, prayer has been made by them to quash the order dated 09.08.2023 and for granting them an opportunity to cross-examine PW-2 and PW4.

4. I have heard learned counsel for the petitioners and has perused the material placed on record.

5. A perusal of the same reveals that the examination-in-chief of PW-2 had been recorded prior to 08.08.2023. On that day, both PW-2 and PW4 had come from Pune. Examination-in-chief of PW4 was recorded in the presence of the petitioners as well as their counsel and for conducting cross-examination, the matter had been posted for after lunch break. However, the petitioners failed to produce their counsel to cross-examine the witnesses though they were called upon several times to call him.

6. It is also revealed from a perusal of the *zimni* order of that date as recorded by the learned trial court that counsel for the petitioners appeared only at 3:30 P.M. on 08.08.2023 and conducted part cross-examination of only one of the two witnesses thereby compelling the witnesses to stay at Ludhiana, though they had to go back to Pune. On 09.08.2023 also the petitioners remained present in the Court but their counsel failed to appear to effect cross-examination of PW-2 and PW-4 and after passing a detailed order learned trial Court had closed the opportunity of cross-examination of PW-2 and PW-4 by the petitioners.

7. It is also revealed from the record that the petitioners had moved an application for recalling of order dated 09.08.2023 before the trial Court but by passing a detailed order the trial Court had dismissed that application on 15.09.2023.

8. The act and conduct of the petitioners as reflected from the record reveals that cross-examination of PW-2 and PW-4 had been intentionally not got conducted by the petitioners with an intention to harass them. Petitioner no.1 is none other than the husband of PW-2 and father of PW-4. No explanation has been given by the petitioners as to why they could not produce their counsel on 08.08.2023 when the proceedings were conducted by the trial Court after lunch break and as on 09.08.2023 also. The non-appearance of counsel for the petitioners on both these dates is clearly indicative of the fact that the petitioners wanted to delay conducting cross-examination of PW-2 and PW-4. However, still this Court is of the considered opinion that in the interest of justice one more opportunity can be granted to the petitioners for the appearance and prove their *bona fide*. The cost is the panacea with which the witnesses can be compensated. Therefore, the order dated 09.08.2023 as passed by the learned trial Court is reversed and opportunity to cross-examine PW-2 and PW-4 is granted to the petitioners subject to the condition that on appearance of PW-2 and PW-4 before the trial Court they would pay costs of Rs.50,000/- in cash to PW-2 prosecutrix before conducting cross-examination of these two witnesses and further subject to cash payment of travelling expenses which will be spent by PW-2 and PW-4 for purchase of tickets etc. for coming to the trial Court.

9. The trial Court is directed to issue summons to PW-2 and PW-4 by recalling them for their cross-examination for a date beyond 23.10.2023 which is disclosed to be the next date of hearing before it.

10. A note shall be given on the summons that they would be paid travelling expenses as well as costs of Rs.50,000/-.
11. It is also made clear that the petitioners shall effect cross-examination of PW-2 and PW-4 on the date of their appearance itself and no further opportunity shall be granted to them.
12. Petition is disposed of in these terms.

19.10.2023
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(MANISHA BATRA)
JUDGE

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