



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

CRM-M-7738-2020

Date of decision: 01.10.2024

Jyoti

...Petitioner

Versus

Mandeep Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Viney Puri, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/accused under Section 482 Cr.P.C with the prayer to quash order dated 04.12.2019 Annexure P-7 passed by the Court of Judicial Magistrate Ist Class, Jalandhar in a criminal complaint NACT-4232-2018 titled Mandeep Kaur Vs. Jyoti etc. Annexure P-1, vide which the cross examination of CW-1 Mandeep Kaur was declared as 'nil' and order dated 23.01.2020 Annexure P-12 passed by the said Court whereby an application moved by the petitioner under Section 311 Cr.P.C for recalling CW-1 Mandeep Kaur for further cross examination was dismissed.

2. There is no representation on behalf of respondent for the last 2/3 dates.

3. The counsel for the petitioner submits that prior to 04.12.2019, CW-1 Mandeep Kaur did not appear before the trial Court for her cross examination on number of dates, as is evident from Annexures P-3, P-4, P-5 and P-6. It is further submitted that on 04.12.2019, the petitioner was unable



to appear before the trial Court due to some unavoidable circumstances and the cross examination of CW-1 Mandeep Kaur was treated as 'nil' by the trial Court vide impugned order Annexure P-7. It is further submitted that there was no intention on the part of the petitioner to delay the proceedings before the trial Court and even the interest of justice demands that petitioner be given fair opportunity to cross examine the complainant, as the same is necessary for proper decision of the case. It is further contended that even dismissal of application filed by the petitioner under Section 311 Cr.P.C, by the trial Court has caused miscarriage of justice to the petitioner.

4. I have considered the submissions made by counsel for the petitioner.

5. It is settled by various decisions of the Hon'ble Apex Court as well as High Courts that the Courts should be liberal in granting the prayer sought unless serious injustice or irreparable loss is likely to be caused to the other side or that the prayer sought is not a bonafide one. A party cannot be refused just relief merely because of some mistake, negligence or inadvertence on her/his part. Denial of the right to cross examine the complainant on behalf of the accused means denial of fair trial. A perusal of zimni orders reveals that CW-1 Mandeep Kaur did not appear for her cross examination by the opposite party on at least four dates. On 04.12.2019, CW-1 Mandeep Kaur appeared in the Court but as stated by counsel for the petitioner, she failed to turn up due to some emergent situation and on the same very day, the cross examination of CW-1 on behalf of petitioner was treated as 'nil', without taking into consideration the fact that it was single default on the part of the petitioner. Undoubtedly, the cross examination of

CW-1 Mandeep Kaur is necessary for the just decision of the case.

6. In view of the above, the impugned orders Annexure P-7 and P-12 are hereby set aside. The trial Court is directed to give one effective opportunity to the petitioner to cross examine CW-1 Mandeep Kaur subject to cost of Rs.5000/- to be deposited by the petitioner with the District Legal Services Authority concerned.

7. The present petition is disposed of in the aforesaid terms, without expressing any opinion on the merits of the case.

01.10.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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