



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

**CRM-M-42191-2018(O&M)
Date of Decision: 13.09.2024.**

MANGAL SINGH

.....Petitioner

VERSUS

JASJEET SINGH

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Jaideep Verma, Advocate,
for the petitioner.

Mr. Tarun Deora, Advocate,
for the respondent.

KULDEEP TIWARI, J. (Oral)

1. Through the instant petition, challenge is thrown to the order dated 03.07.2018 (Annexure P-5), passed by the learned trial court concerned, whereby the application for recalling the complainant (respondent herein), for cross-examination was dismissed, and also the order dated 11.09.2018 (Annexure P-6), whereby, defence evidence was also closed by court order.

2. Learned counsel for the petitioner, in asking for the relief (*supra*), submits that the complainant was cross-examined partially, and on dated 19.05.2017, the earlier counsel who was representing the petitioner/accused, before the learned trial court concerned, did not conduct his cross-examination, despite the matter was passed over on number of occasion on that day, which led the latter, to close the

opportunity to cross-examine the complainant. The relevant extract of the order reads as under:-

"Today the case was fixed for cross-examination of the complainant. Counsel for the accused sought some time for the cross examination of complainant. After that case was called at 12:00 PM but counsel for the accused did not turn up in the court for cross-examination of complainant as such case was fixed for after lunch. After lunch case was called twice & second time counsel for the accused come present in the court but did not cross-examine the complainant. After giving number of opportunities cross-examination of complainant witness is declared nil after giving opportunity to counsel for the accused to cross examine the witness. Complainant close his after notice evidence by his separate statement. Now the case is adjourned to 03.07.2017 for recording the statement u/S 313 Cr.P.C".

3. He further submits that thereupon, due to non-conducting the cross-examination of the complainant, he closed his after notice evidence vide above extracted order, and thereafter, the opportunity to lead defence evidence was closed by the court order vide order dated 11.09.2018 (Annexure P-6), which is also under challenge before this Court.

4. Learned counsel for the petitioner submits that without conducting the cross-examination, that too of the main complainant, it could be tantamount to an *ex parte* proceeding, as the cross-examination is the only tool with an accused, to establish his innocence.

5. On the other hand, learned counsel for the respondent/complainant did not oppose the grant of asked for relief to the present petitioner, and, he is not averse, if an opportunity to cross-examine the complainant, is granted to the present petitioner, however, subject to the costs as the intention of the petitioner/accused was to cause the delay in conclusion of the trial, in which he has, in fact, succeeded.

6. This Court has considered the submissions made by learned counsel for the parties concerned, and perused the entire case file.

7. Without going into the merits of the case, and considering the no objection extended by learned counsel for the respondent/complainant, and the fact that the cross-examination of the complainant is essential for the petitioner to established his innocence, one last and final opportunity is granted to the petitioner for the purpose of cross-examination of the complainant, and further, one opportunity to lead his defence evidence, if any.

8. The learned trial court concerned, shall call upon the complainant for his cross-examination. It is made clear that on the day when the learned trial court concerned, calls the complainant for his cross-examination, the petitioner/accused shall conduct his cross-examination on the same day itself, and no further opportunity shall be afforded to petitioner for the said purpose.

9. Thereupon, the learned trial court concerned, shall also extended one opportunity to the petitioner/accused for leading defence evidence, if any.

10. The petitioner is burdened with a cost of Rs.10,000/-, to be paid to the complainant, and only if the said cost is paid, the petitioner shall be granted the aforesaid opportunity.

11. **Disposed of** accordingly.

September 13, 2024

dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No