

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 15<sup>th</sup> January, 2010

Date of Order: 19<sup>th</sup> January, 2010

**CM(M) No. 907/2009**

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**19.01.2010**

**Shri Nitin Gupta**

**... Petitioner**

Through: Mr. G.L.N.Murthy, Advocate

Versus

**Ruchika Gupta**

**... Respondents**

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

**ORDER**

By this petition, the petitioner has assailed an order dated 12<sup>th</sup> May, 2009 passed by the learned trial Court whereby the learned trial Court dismissed an application of the petitioner for recalling PW-1 for cross examination. It is submitted by the petitioner that he was in judicial custody from 14<sup>th</sup> August, 2008 to 6<sup>th</sup> September, 2008 due to which he could not give proper instructions to the Counsel and the cross examination could not be done. He should be accorded one opportunity to cross examine the witness.

2. The Trial Court observed that the affidavit of witness of PW-1 was filed on record on 5<sup>th</sup> March, 2008 and examination in chief was recorded. On that day the cross examination was not done and it was deferred subject to cost of Rs.1200/-. The matter was adjourned to 21<sup>st</sup> August, 2008 but on 21<sup>st</sup> August, 2008 again no cross examination was done while the father of the petitioner and the Counsel were present. The Counsel stated that he had no instruction to cross examine the witness and the matter was passed over for seeking instruction. On the second call, the father of the petitioner stated that he had specific instructions neither to pay cost nor to cross examine the witness. Under these circumstances, the cross examination of the PW-1 was closed. Looking at the conduct of the petitioner the trial Court dismissed the application.

3. It is submitted by the petitioner that since petitioner was in judicial custody from 14<sup>th</sup> August, 2008 to 6<sup>th</sup> September, 2008, he could not be present at the hearing nor could give instructions to his Counsel and submitted that his father had not been given any instructions by him to make statement in the Court. The petitioner after getting released from the judicial custody made the application asking allowing him to cross examine.

4. It is not disputed that the petitioner in this case was in judicial custody on the date when the case was adjourned for cross examination of the witness subject to payment of cost. Since the petitioner remained in judicial custody for about 23 days, it is quite probable that petitioner could not give instructions to his Counsel and also could not pay the cost. Under these circumstances, I consider that the Trial Court should have allowed the application for cross examination of PW-1 although the trial Court could have put some conditions looking into the conduct of seeking adjournment for cross examination, even when the petitioner was not in judicial custody.

5. I, therefore allow this petition. The order of the trial Court is set aside. The petitioner is allowed to cross examine the witness PW-1 subject to cost of Rs.20,000/-. The cost be paid by way of cheque/draft in the name of the respondent to the respondent. Cost is meant to compensate the respondent and not to compensate the Counsel. With these directions, the petition is disposed of.

**January 19, 2010**

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**SHIV NARAYAN DHINGRA, J.**