

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

Crl. Misc. No.M-31009 of 2015 (O&M)

Date of Decision: 19.09.2015

Monika Razda

.. Petitioner

Vs.

State of Haryana & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. KS. Jetley, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

The petitioner lodged FIR No. 23 dated 17.01.2012, under Sections 323, 406, 498-A, 506 read with Section 34 IPC, registered at Police Station Mahesh Nagar, Ambala Cantt. against respondents No.4 to 6. She is aggrieved of order dated 24.08.2015(Annexure P-1) passed by the trial Court vide which the application under Section 311 Cr.P.C. seeking recall of CW-1 Dr. S.K. Garg, has been dismissed.

Her grievance is that Dr. S.K. Garg was examined in her absence and the original treatment record was with the complainant and the document was marked in the statement of doctor. Later it was introduced in her statement as Ex.PW4/A, but there was an objection by the defence.

I have heard learned counsel for the petitioner and have gone through the record carefully.

Section 311 of the Code was enacted to enable the Court to find out the truth whereunder any Court exercising its discretionary authority, at any stage of enquiry, trial or other proceeding can summon or examine any person in attendance or recall or re-examine any person already examined who are expected to throw light upon the matter in dispute. The provisions however cannot be invoked to fill up the lacuna.

Learned counsel for the petitioner was asked to produce all the zimni orders. Only some orders have been placed on record. A perusal thereof reveals that Dr. S.K. Garg was examined on 31.03.2014 and he proved the treatment chart Mark-A. The original had not been given to the police, therefore, the document was marked. The petitioner stepped into the witness box on 20.03.2015. In her statement she tendered the treatment card as Ex.PW4/B (originally Mark-A), which was objected to by the defence counsel. Now original and photo copy both are on record. The plea that the document was marked at her back cannot be accepted.

The pleadings show that a complaint was filed by the complainant which was forwarded under Section 156(3)

Cr.P.C. and thereafter FIR was lodged. The complainant was represented by a counsel from the very beginning. Though the original out patient card was not handed over to the police in the beginning, even otherwise, the hospital maintains its own record and entire record is not handed to the patient. On the basis of record available, Dr. S.K. Garg had already made deposition in the case and had been cross-examined at length by the accused. The statement of the complainant was completed on 18.04.2015. She was well aware of the proceedings that had taken place earlier to her examination. The State counsel had closed the prosecution evidence on 01.08.2015. The case pertains to the year 2012 and remained pending for prosecution evidence for a considerable period. At a belated stage, when the trial was at fag end and the case was fixed for defence evidence, the complainant had filed the application under Section 311 Cr.P.C., which cannot be permitted.

For the reasons above, there is no illegality or perversity in the impugned order passed by the trial Court, which warrants interference by this Court. The petition is dismissed.

September 19, 2015
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(ANITA CHAUDHRY)
JUDGE