

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

CRM-M-No. 38236 of 2012
Date of decision: -23.7.2015.

Dr. Som Nath Bansal @ Som Prakash BansalPetitioner.

vs.

State of HaryanaRespondent.

CORAM: - HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gaurav Mohunta, Advocate for the petitioner.

Mr. Baljinder Singh Virk, DAG, Haryana

Surinder Gupta, J. (Oral)

This is a petition under Section 482 Cr. P.C for quashing of the order dated 22.11.2012 passed by learned Addl. Sessions Judge, Kurukshetra (Annexure P-4) vide which application filed by the petitioner under Section 391 Cr. P.C. was dismissed.

Heard.

Petitioner is a doctor by profession. FIR No. 88 dated 29.5.2002 for offence punishable under section 304-A IPC was registered against him at police station Ladwa and he was convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs. 1000/-.

During the pendency of the appeal, the petitioner moved an application under Section 391 Cr. P.C before the Additional Sessions Judge, Kurukshetra seeking summoning of certain witnesses and to produce the postmortem report of the deceased, his medical record of CHC Ladwa and report of the chemical examiner.

Learned Appellate Court vide the order dated 22.11.2012, declined the application with the observation in para 5 of the order, which reads as under: -

“5. From the facts and circumstances of the case, it is clear that it is not a case of exercise of due diligence during the proceedings before the learned Trial Court and the whole exercise has been sought to be performed which would almost lead to de novo trial. It is true that interest of justice is supreme but allowing of the application would cause prejudice to the case of the prosecution especially when there is no occasion for applicant-appellant remaining in slumber. As far as lack of proper legal advice is concerned, this cannot be said to be a valid ground for invoking jurisdiction of this Court under Section 391 of the Code of Criminal Procedure, 1973. Thus, in view of the facts and circumstances of the case, the application warrants dismissal and the same is hereby dismissed.”

The dispute in this case pertains to the death of Kehar Singh who had consumed poison and was brought to the hospital of the petitioner for treatment.

Learned counsel for the petitioner submits that the petitioner, keeping in view the critical condition of the patient, advised the attendants to take him to PGI or to some other hospital. Thereafter, the patient was taken to CHC Ladwa, where he died. The postmortem examination of the deceased-Kehar Singh was also conducted at LNJP Hospital Kurukshetra. The police neither produced the postmortem report nor placed on record the medical record of CHC, Ladwa and the record of the chemical examiner.

Learned State counsel submits that the above documents were not the part of challan filed by police. The allegation against the

petitioner was that he had committed lapse in treatment of the patient and the documents sought to be produced have no relevance in the matter and petitioner could produce these documents during trial. He has come up with no explanation for not producing and proving these documents at trial stage. The documents sought to be produced and proved on file are the official documents which can neither be fabricated at this stage nor the production of these documents in any manner will cause any prejudice to the prosecution, rather these are material documents which will help the Court in reaching just conclusion about cause of death of Kehar Singh. The fact that such documents were not called and proved during the trial of the case, is no ground to debar the petitioner from producing the documents during the appeal as the existence of these documents is not denied. Even otherwise, these documents relating to death of Kehar Singh and are material documents which otherwise should have been made part of final report.

In view of the above, the present petition is allowed. The petitioner is permitted to produce and prove the postmortem report, report of the chemical examiner and the medical record as mentioned at serial No. 2 to 4 of the application dated 15.12.2010.

The petitioner will produce the entire evidence at his own responsibility within a period of four months from next date fixed before the trial Court after receipt of this order.

(SURINDER GUPTA)
JUDGE

23.7.2015
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