

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

**Crl. Misc. No.M- 7866 of 2014
Date of decision : 08.04.2015**

Subhash Chander

.....Petitioner(s)

Versus

Kishan Dev (since deceased) and others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Sahil Kaushal, Advocate
for the petitioner.

Ms. Amandeep Kaur, Advocate for
Mr. J.B.S. Gill, Advocate
for the respondents.

ANITA CHAUDHRY, J(ORAL)

This is a petition under Section 482 Cr.P.C. for setting aside the orders dated 28.01.2014 (Annexure P-5), 05.02.2014 (Annexure P-6) and 06.02.2014 (Annexure P-7), passed by JMIC, Samrala in a complaint case filed under Section 323/324 IPC.

Notice was issued to the respondents. Learned counsel for the respondents informs that respondent no.1-Kishan Dev has since died.

Heard.

The counsel for the petitioner contends that the complainant had examined Dr. Ashwani Sareen by way of preliminary evidence and that right has now been denied. He refers to the order

dated 28.01.2014 (Annexure P-5) and contends that Subhash Chander and Harjinder Singh had been examined and their cross-examination had been deferred and the trial Court closed the remaining evidence of the complainant though it adjourned the case for cross-examination of above said witnesses. He contends that on the adjourned hearing i.e. 05.02.2014, the counsel for the accused had sought adjournment and the case was again adjourned to 06.02.2014 and on said date both the witnesses were cross examined and the case had been posted for consideration on charge.

The counsel appearing for the respondents submits that sufficient opportunity had been granted to the complainant and supports the order.

A perusal of the available documents show that though the complaint had been filed in 2004 but the accused were summoned in November, 2012. The complainant had moved an application (Annexure P-4) for summoning Dr. Ashwani Sareen. The order dated 28.01.2014 (Annexure P-5) does not indicate any default on the part of the complainant. The order is silent. It does not refer to any fault on the part of the complainant. The Court closed the evidence of the complainant but in the same stroke adjourned the case for cross-examination of complainant witnesses. If the case could be adjourned for the cross-examination of the complainant's evidence, an opportunity could have been afforded to the complainant for examining the Medical Officer.

The list of witnesses had been supplied by the petitioner and it was the Court who had to summon the witnesses. The

complainant had alleged in his complaint that he had been beaten up and he had been medically examined, therefore, statement of the Medical Officer was necessary.

In the light of the above, the petition is allowed. The petitioner would get only two opportunities to examine the Medical Officer. The complainant, if so advised, would take dasti summons so that service is effected and the case is not adjourned. The petition is thus allowed on above terms. A copy of the order be sent to the Court below.

08.04.2015

sunil

(ANITA CHAUDHRY)
JUDGE