

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

CRM-M-8293 of 2015

Date of decision : 06.04.2015

Amarjit Singh

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Karanjit Singh, Advocate
learned counsel for the petitioner

Mr. Rimpaljeet Kaur, learned Assistant Advocate
General, for the State of Punjab.

- 1. Whether Reporters of local papers may be allowed to see the judgement?Yes**
- 2. To be referred to the Reporters or not?Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

1. The present petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (hereinafter called the 'Cr.PC') with a prayer for setting aside the order dated 30.10.2014 passed by the learned Judicial Magistrate First Class, Rajpura, whereby the application filed by complainant Vijay Garg under Section 311 Cr.P.C for summoning her husband Narain Garg as a substitute

witness has been allowed.

2. That complainant Vijay Garg through Additional Public Prosecutor has filed an application under Section 311 Cr.PC for summoning Narain Garg, the husband of the complainant as a prosecution witness. As per the averment in the application after the registration of the case, complainant Smt. Vijay Garg is suffering from Brain and Kidney problem and is under treatment at Silver Oak, Mohali and is seriously ill. She remained hospitalized and is not able to depose. Narain Garg her husband may be summoned and allow to depose as a witness before the Court.

3. The said application was contested by the petitioner, but the same was allowed by the learned trial Court vide impugned order. Hence this petition.

4. Learned counsel for the petitioner contended that if Smt. Vijay Garg was unable to attend the Court, the trial Court should have appointed the local commissioner to record her statement in accordance with the provisions of the Cr.P.C. He contended that the substitution of the witness is not permissible while exercising the power under Section 311 Cr.P.C. Thus, he pleaded that the impugned order is illegal.

5. I have duly considered the aforesaid contentions.

6. No doubt, Smt. Vijay Garg was the complainant of the case. On her complaint the case was registered against the petitioner for the offence punishable under Section 420 of Indian Penal Code. Now, it is alleged that Smt. Vijay Garg is unable to depose due to illness and it has been prayed that her husband Narain Garg may be summoned to depose. Narain Garg is the husband of the complainant, so certainly he may be conversant with the facts of the case and his testimony will certainly be essential to the just decision to the case. Section 311 Cr.P.C provides that the Court may at any stage of the trial summon any person as a witness if his evidence appears to it to be essential to the just decision to the case. The discretion exercised by the learned trial Court also seems to be in that perspective. Thus, I do not find any legal infirmity in the impugned order.

7. Consequently, the present petition has no merits and the same is hereby dismissed.

April 06, 2015

s.khan

**(DARSHAN SINGH)
JUDGE**