

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

**Criminal Revision No.4557 of 2015
Date of decision: 28.11.2015**

Shamsher Singh @ Shera

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present: Mr. Sarbjit Singh, Advocate
for the petitioner.

Daya Chaudhary, J.

The present revision petition has been filed to challenge the order dated 13.10.2015 passed by Additional Sessions Judge, Amritsar, whereby, the application moved by the complainant under Section 311 Cr.P.C. to place on record the report of all the X-ray examinations conducted by Navya Diagnostic Centre was allowed.

On the basis of statement of complainant-Sukhwant Singh, the FIR was registered. It was stated by the complainant that the accused has caused injuries to him because of which, he remained admitted in Amandeep Hospital, Amritsar for treatment. During the course of treatment, X-ray examinations of complainant were also conducted by Navya Diagnostic Centre but the Investigating Officer

did not take into possession his original X-rays just to help the accused. Subsequently, an application was moved under Section 311 Cr.P.C. for permitting the complainant to place on record the report of all the X-ray examinations, which were conducted by Navya Diagnostic Centre, near Amandeep Hospital and the same was allowed on 13.10.2015, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner has challenged the aforesaid order on various grounds. He has contended that the evidence of the complainant was recorded in the Court on 02.07.2015 and nowhere it was stated by him that X-ray reports were produced before the Investigating Officer and the same were not taken into possession during investigation. Learned counsel also submits that X-ray reports were not a part of challan filed under Section 173 Cr.P.C and there is no provision to place on record such reports at the final stage of the trial. Subsequently, these reports could even be manipulated and the application moved by the complainant has wrongly been allowed.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

For facilitation, Section 311 Cr.P.C. is reproduced as under: -

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

As per provisions of Section 311 Cr.P.C., the Court is empowered, at any stage of inquiry, trial or other proceeding, to summon any person as witness or to examine any person in attendance, who has not been summoned as witness or to recall or re-examine any person already examined if it appears to the Court that recalling or re-examination or summoning of any person is necessary for just decision of the case. Although power under Section 311 Cr.P.C. is discretionary but it depends upon the facts and circumstances of each case to reach to the conclusion that it is to the satisfaction of the Court to see that cause of justice should not suffer. In case, the Court comes to a conclusion that the production of such evidence, which has been sought to be produced by taking recourse to Section 311 Cr.P.C., would enable the Court to come to a conclusion by recording the finding that it would be just and reasonable and the Court is fully satisfied and justified in permitting

the evidence to be produced under this Section. This Section does not distinguish but rather allows production of evidence whether documentary or oral, which the Court feels is necessary for the just decision of the case and there is no impediment in exercising these powers, which have been conferred by the Legislature on the trial Court. This is the statutory powers conferred upon the trial Court. The purpose and object of the trial is to find out the truth and the truth alone should prevail. The trial Court is to make all efforts to reach to a correct conclusion but the requirement is that the same should be in the interest of justice.

The stage of the trial is not necessary as is clear from the provisions of Section 311 Cr.P.C. that it can be during inquiry, trial or other proceedings. The object underlying under Section 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is that whether it is essential for the just decision of the case. However, this section is not limited only for benefit of the accused and it will not be an improper exercise of the powers of the Court to summon a witness under this Section merely because the evidence supports the case of the prosecution and not that of the accused. This Sections is a general Section which is applicable to all proceedings, inquiries and trials under the Code and empowers the trial Court to use this discretion. The stage of trial is not relevant. This

Section confers a very wide power, which is to be exercised by using the discretion but judiciously as the wide the power, the greater is the necessity of application of judicial mind.

On perusal of impugned order, it is apparent that the application has been moved by the complainant-injured as the X-ray reports were not considered by the Investigating Officer and those are necessary for the interest of the injured and also for the Court to reach to correct conclusion. A specific finding has been given by the trial Court and application has been allowed. The impugned order has mainly been challenged only on two grounds that the reports were not part of final report and the trial is at the fag end. These two grounds or contentions are not relevant in case, the X-ray reports are necessary for just decision of the case.

This view has been held by this Court in **Jagdish and another vs. State of Haryana, Criminal Revision No.2547 of 2009 decided on 25.09.2009** as well as in **Dr. Gurpreet Kaur vs. Appropriate Authority-cum-Senior Medical Officer, Incharge Sub-Division Hosital, Tehsil Phillaur (Jalandhar), Criminal Misc. No. M-17027 of 2009 decided on 04.12.2009** wherein judgment of Hon'ble the Apex Court in **Godrej Pacific Tech. Limited vs. Computer Joint India Limited, 2008(3) RCR (Criminal) 897** has been relied upon.

Same view has been held by Hon'ble the Apex Court in **Jamatraj Kewalji Govani vs. State of Maharashtra, 1967(3) SCR**

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In view of the facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the revision petition being devoid of any merit is dismissed.

28.11.2015
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(DAYA CHAUDHARY)
JUDGE