

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

Crl. Misc. M 20830 of 2015 (O&M)
Date of decision: December 7th, 2016

Sunita Rani

...Petitioner

Versus

Mahi Pal and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. GC Shahpuri, Advocate,
for the petitioner.

Mr. Varinder Chhibbar, Advocate,
for respondents No. 1 to 6.

Mr. SK Saini, DAG, Haryana,
for respondent No.7

JAISHREE THAKUR, J.

Aggrieved against the dismissal of the application filed by the petitioner for permission to examine Dental Surgeon, Yamuna Nagar as a witness in the complaint case No. 1030 dated 11.9.2016, the instant petition has been filed.

In brief the facts are that the petitioner herein filed a complaint against respondents 1 to 6 under Sections 323, 325, 354, 148, 149, 506/34 IPC alleging that on 10th August, 2006 around 7 a.m. in the morning when the complaint was coming back to her house from the fields, the accused persons approached her and compelled her to ask her father to withdraw the criminal case pending against Pyare Lal—respondent No.6. When the petitioner refused, the accused persons started abusing her and also attacked

her giving her multiple injuries, including broken teeth. Thereafter, the petitioner was taken to CHC, Sadharua, where medical of the complainant was conducted. On the aforesaid allegations, a complaint was filed.

The petitioner led her preliminary evidence and on the basis of the said evidence, the accused persons were summoned to face the trial. However, as the petitioner could not examine the Dental Surgeon, Civil Hospital, Yamuna Nagar, in support of the complaint to prove that she had suffered injuries on her teeth, an application was preferred under Section 311 Cr.P.C. seeking permission to examine Dental Surgeon, Civil Hospital, Yamuna Nagar. The Magistrate dismissed the said application. Aggrieved against the said order of dismissal, the instant petition has been filed.

Mr. Shahpuri, appearing learned counsel for the petitioner argued that the learned Magistrate has failed to appreciate that the court has ample power to summon any person as a witness at any stage of trial when such evidence would be essential for the just decision of the case. It is also argued that the Dental Surgeon is a material and essential witness to prove the fact that the petitioner had suffered injuries to her teeth. He also relied on outdoor ticket which is exhibited as C2 to contend that the petitioner was referred to the Government Hospital, Yamuna Nagar and that was enough to show that she was referred for treatment to the Dental Surgeon.

Per contra, learned counsel appearing for the respondents argued that there is no infirmity in the order so passed since the petitioner has already completed her evidence and there is no mention that the complainant had been examined by the Dental Surgeon, Civil Judge,

Yamuna Nagar and, as such, no interference is called for.

I have heard learned counsel for the parties and with the able assistance of the counsel have also gone through the record of the case.

Admittedly, Section 311 of the Code of Criminal Procedure pertains to the power of a magistrate to summon any material witness or examine any person present at any stage of an inquiry, trial or other proceedings 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 any such person, if his evidence appears to it to be essential for the just decision of the case. The petitioner herein moved the application for summoning Dental Surgeon to prove that she had suffered an injury as a result of which her tooth was broken. It would be pertinent to note that this application was moved on 24th March, 2015 by stating that she could not examine the Dental Surgeon, Civil Hospital, Yamuna Nagar, as her witness because of inadvertence and oversight at the time she was leading her evidence. It was argued that the Dental Surgeon was an important witness in order to prove her case.

The learned Magistrate declined to summon Dental Surgeon as a witness by holding that there are no allegations in the complaint that the petitioner was ever referred to Dental Surgeon for examination or treatment and, therefore, the complainant would have no right to summon him as a witness.

A perusal of the complaint that has been filed only states that the complainant was shifted from CHC Sadhaura where medical of the

complainant was conducted. The argument that outdoor ticket Ex. C-2 itself is enough to show that the petitioner was referred for treatment to the Dental Surgeon is without merit on account of the fact that Ex. C-2 outdoor ticket only mentions that the patient is referred to General Hospital, Yamuna Nagar for "PA view skull, as the machine was not in working order". What can be inferred that the patient was referred to Government Hospital, Yamuna Nagar for x-ray and not that she was referred to the Dental Surgeon at Yamuna Nagar. As has been noted by the Magistrate, that despite the fact that the petitioner had taken 24 opportunities to examine the Dental Surgeon as a witness, the ground for summoning the witness on account of the fact that inadvertently she had not availed the opportunity to do so, is not sustainable.

No doubt, the Hon'ble Apex Court has held that the courts should be liberal in allowing an application under Section 311 Cr.PC. but at the same time, it has also held that it does not necessarily mean that the approach should be magnanimous. In **State of Haryana Versus Ram Mehar and others reported 2016 (4) RCR (Crl.) 154**, the law was culled out and it was held therein that wide power under Section 311 of the Cr.P.C. should be resorted to only with the object of finding out the truth and such power cannot be used to fill in lacuna in a prosecution case. The power should be exercised judiciously and not arbitrarily and the court must satisfy itself that it is essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

In the case in hand, admittedly, there is no averment in the

complaint that the petitioner complainant was under treatment of a Dental Surgeon at Yamuna Nagar; nor is there any other such proof on record to substantiate that the petitioner was under his treatment. Ex. C-2 relied upon only is a referral from CHC Sadhaura to Government Hospital, Yamuna Nagar for the purpose of x-ray, that too because the machine installed therein was not in a working condition, which cannot be read that she had been referred for treatment under the Dental Surgeon.

Therefore, finding no illegality or infirmity in the impugned order, the present petition is dismissed.

December 7th, 2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No