

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-35773 of 2015 (O&M)
Date of Decision: March 16, 2016

Malkeet Singh

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Neeraj Madaan, Advocate
for the petitioner.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of the impugned order dated 19.08.2015 passed by learned Judicial Magistrate Ist Class, Fazilka, vide which the application under Section 311 Cr.P.C. filed by Asstt. Public Prosecutor was dismissed.

Notice of motion was issued and learned State counsel appeared and contested the petition. However, none appeared on behalf of respondents No.2 to 5 despite service.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that learned JMJC, Fazilka vide

impugned order dated 19.08.2015 dismissed the application under Section 311 Cr.P.C. filed by the prosecution. The application was filed by the prosecution for permission to recall Dr.Kavita Singh, Medical Officer, Civil Hospital, Fazilka for proving x-ray films of injured Harbans Singh and Malkeet Singh. It is stated in the application that due to inadvertence, x-ray films of above-said injured could not be exhibited and proving of those x-ray films is necessary for just decision of the case.

In the reply by the defence, it is stated that this application is not maintainable at the belated stage because Dr.Kavita Singh was examined much earlier and since then, the prosecution has availed so many dates for concluding its evidence and x-ray films are already on the judicial file and were in the notice of the prosecution.

The Court below dismissed the application mainly on the ground that this evidence was in the knowledge of the prosecution and the doctor witness also and it is a lapse on the part of prosecution and it cannot be allowed to undo the same through this application under Section 311 Cr.P.C.

The perusal of the reasonings given by learned Court below shows that these are not correct and as per law. The application under Section 311 Cr.P.C. can be filed at any stage and the Court has ample powers to recall the witness for just decision of the case. The x-ray films are already on the file and only x-ray reports are proved by PW-2 Dr.Kavita Singh. It looks that due to inadvertence, x-ray films could not be got proved from the doctor. In

no way, the recalling of PW-2 Dr.Kavita Singh for proving these x-ray films can be held as filling up of lacuna etc. As stated in the application that due to inadvertence these x-ray films could not be got proved from the doctor, therefore, PW-2 Dr.Kavita Singh can be recalled to prove the x-ray films, which are necessary to know the nature of injuries and fractures etc. Therefore, the evidence which the prosecution wants to prove, is essential for just decision of the case.

In view of the above discussion, the application under Section 311 Cr.P.C. filed by the prosecution is allowed and the impugned order dated 19.08.2015 passed by learned JMIC, Fazilka is set aside.

Therefore, finding merit in the present petition, the same is allowed.

March 16, 2016
Vgulati

(INDERJIT SINGH)
JUDGE