

CRR No. 177 of 2012

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 177 of 2012.
Date of Decision : 18.01.2016.

Sahab Deen

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

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

Present: Mr. Namit Khurana, Advocate for
Mr. Harkesh Manuja, Advocate for the petitioner.

Ms. Supriya Arora, A.A.G., Haryana.

Mr. S.S. Dinarpur, Advocate
for respondents No. 2 to 4.

Kuldip Singh, J.(Oral)

Challenged in the present revision petition is the order dated 06.01.2012 passed by the learned Additional Sessions Judge, Yamunanagar at Jagadhri vide which application of the complainant filed under Section 391 Cr.P.C. for summoning the Doctor to prove the X-ray and MLR was dismissed.

I have heard learned counsel for the parties and

have also gone through the case file very carefully.

It comes out that a challan was presented by the police against the present respondents under Sections 323, 325 read with Section 34 of IPC pertaining to FIR No. 46, dated 11.03.2003, Police Station Radaur. The trial continued for seven years. The prosecution was granted numerous opportunities and despite one last opportunity, prosecution failed to conclude its evidence. The same was closed by orders on dated 17.03.2010. The said order was never challenged before the Superior Court. Ultimately vide judgment dated 01.10.2010 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, the accused were acquitted of the offences punishable under Section 325 IPC for want of medical evidence. However, the accused were convicted under Section 323 read with Section 34 IPC and were accordingly, sentenced. Pending the appeal before learned District and Sessions Judge, Yamuna Nagar at Jagadhri, the complainant moved the present application under Section 391 Cr.P.C., which was dismissed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide impugned order dated 06.01.2012.

Learned counsel for the petitioner has argued that there is no fault on the part of the complainant. The medical evidence was material. The Court should have taken coercive steps to compel the appearance of Doctors. Therefore, it is

stated that Doctor should be summoned to prove the MLR and X-ray reports. Learned counsel has also relied upon Division Bench judgment of this Court in *Pranab Bishwas Vs. State of Punjab, 2012(4) RCR(Criminal) 337* and *Chamkaur Singh Vs. Amritbir Singh and another, 2014(3) RCR(Criminal) 777.*

After going through the said authorities, I am of the view that whether the additional evidence is to be allowed at the appellate stage depends upon the facts of each case. In *Chamkaur Singh's case (supra)*, the charges were pertaining to murder of the entire family and there was a collusion between the investigating agency and the accused. As such in these extra ordinary circumstances, powers were exercised. In *Pranab Bishwas's case (supra)*, a Doctor was murdered and, therefore, the powers were exercised.

However, in the present case, the charges are under Sections 323, 325 IPC. The trial continued for seven years. There has to be some end to the trial. The prosecution was given due opportunities to ensure the appearance of the said Doctor but it failed to produce the said witness despite numerous opportunities including the last opportunity. The said order of closing the prosecution evidence was never challenged before the Superior Court. Therefore, it has now become final. The prosecution or the complainant cannot be allowed backdoor entry by filing application under Section 391

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Cr.P.C. to nullify the effect of the order dated 17.03.2010. It being so, I do not find any merit in the present revision, therefore, the same is dismissed.

Dismissed.

January 18, 2016.
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(KULDIP SINGH)
JUDGE