

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

**Criminal Revision No.4080 of 2015
Date of Decision:-22.12.2016**

Fauja Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sukhjot Singh, Advocate
for the petitioners.

Mr. Sultan Singh Gill, DAG, Punjab.

Mr. Paras Talwar, Advocate
for respondent No.2.

Mr. Ishan Bhateja, Authorised Representative
for respondent No.3.

HARI PAL VERMA J.

The petitioners have filed the present revision petition impugning the order dated 6.10.2015 passed by learned Judicial Magistrate 1st Class, Ludhiana whereby learned Magistrate has reviewed his own order dated 17.9.2015.

Vide order dated 6.10.2015 it has been observed that no doubt Dr. Bobby John has neither examined the patient Fauja Singh nor he was writer of the said MLR. Dr. Jalesh and Dr. Vishes Jain, who examined Fauja Singh had left the institution, therefore, in their absence, Dr. Bobby

John can only be examined for the purpose of identifying the signatures of the concerned doctors, who conducted the MLR but he cannot prove its contents.

Learned counsel for the petitioners has argued that the complainant was aggressive party but instead of registering case against them, the FIR has been registered against the petitioners. The complainant had given injuries to the petitioner No.1 with iron pipes and ice picks and thus petitioner No.1 suffered multiple fracture on his both arms. For the serious injuries on the person of petitioner No.1, he was taken to Civil Hospital, Khoomkalan from where he was referred to Civil Hospital, Ludhiana. Considering the serious condition he was taken to CMC Hospital, Ludhiana, where he was operated upon and rods were inserted in both of his arms and he remained admitted there for about eight days. Accordingly, cross version case of petitioner No.1 was recorded under Sections 323, 325, 34 IPC whereas the injuries in the MLR clearly shows that it is clear case of Section 307 IPC but the police has registered the cross version case only for the offences under Sections 323, 325, 34 IPC. The petitioners moved an application under Section 311 Cr.P.C. for examination of Dr. Bobby John of CMC Hospital, Ludhiana as a prosecution witness to prove the injuries referred in the MLR of petitioner No.1 and accordingly, learned Judicial Magistrate 1st Class, Ludhiana has allowed the said application vide his order dated 17.9.2015 stating therein that Dr. Bobby John is a necessary witness to be examined in order to prove the injuries on the person of petitioner No.1 as detailed in the MLR. However, he submits

that thereafter the complainant party moved an application with a prayer not to allow Dr. Bobby John to prove the contents and injuries as detailed in the MLR of petitioner No.1 Fauja Singh, which was allowed by learned JMJC, Ludhiana vide order dated 6.10.2015 and the learned Magistrate has observed that Dr. Bobby John can only be examined only for identifying the signatures of the doctors who conducted the MLR but he cannot prove its contents.

It has further been argued by learned counsel for the petitioners that earlier learned Magistrate has allowed Dr. Bobby John to prove the injuries on the person of petitioner No.1 and also the MLR, but vide subsequent order dated 06.10.2015 he has reviewed the order dated 17.9.2015 and held that Dr. Bobby Jain can only be examined for the purpose of identifying the signatures of the concerned doctors who conducted the MLR, but he cannot prove its contents. The learned Magistrate has failed to appreciate that Dr. Bobby John was the Incharge of Dr. Nalish and Dr. Vishesh Jain of CMC Hospital, Ludhiana, who have conducted the medical examination of petitioner No.1 under the supervision of Dr. Bobby John. He has referred to Annexure P-10, which is the consent form filled up for examination of the injured by the doctor and name of Dr. Bobby John duly find mention therein. Therefore, he was part of the team of doctors, who conducted the medical examination of petitioner No.1.

On the other hand, learned counsel for the respondent-complainant has argued that Dr. Bobby John can only be allowed to be examined to the extent of identifying the signatures of the concerned

doctors who conducted the MLR and he cannot prove the contents of the MLR. He states that the name of Dr. Bobby John in the consent form (Annexure P-10) has been inserted at later stage and therefore, the document has been tempered with.

I have heard learned counsel for the parties.

A perusal of the consent form (Annexure P-10) shows that the name of Dr. Bobby John duly find mention in the consent form, wherein it is established that Dr. Bobby John has examined the petitioner No.1. Therefore, the observation made by learned Magistrate that he can be examined only for the purpose of identifying the signatures of the concerned doctors, who conducted the MLR only, is totally contrary to record. Dr. Nalesh and Dr. Vishes Jain of CMC Ludhiana are Surgeon and Assistant and they are subordinate to Dr. Bobby John. The petitioner was medically examined and necessary surgery was conducted upon him. Therefore, this Court finds that the order dated 6.10.2015 restricting the examination of Dr. Bobby John only for the purpose of identifying the signatures of the concerned doctors, who conducted the MLR, cannot be accepted.

Since this Court cannot ignore the order dated 17.9.2015 whereby the learned Magistrate has himself observed that since Dr. Nalesh and Dr. Vishes Jain of CMC Hospital Ludhiana have left the institution, therefore, in order to prove the injuries on the person of petitioner No.1, examination of Dr. Bobby John is necessary. There is no illegality in the order dated 6.10.2015 whereas the order dated 17.9.2015 has been passed

contrary to the record i.e. (Annexure P-10) whereby the petitioner was examined and the surgery was conducted under the supervision of Dr. Bobby John. Thus, Dr. Bobby John was member of the team who performed surgery on the person of petitioner.

Accordingly, the present petition is allowed and the order dated 6.10.2015 is set aside and Dr. Bobby John is permitted to be examined to prove the MLR of petitioner No.1 Fauja Singh in accordance with law.

December 22, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable : Yes / No