

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

**Criminal Revision No.4929 of 2015 (O & M)
Date of Decision:-08.01.2016**

Kuldip Singh

...Petitioner

Versus

Central Bureau of Investigation

...Respondent

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

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

Present:- Mr. S.K. Garg, Senior Advocate with
Ms. Shweta Nahata, Advocate
for the petitioner.

HARI PAL VERMA J.

The petitioner has filed the present revision petition under Section 401 Cr.P.C. against the order dated 5.12.2015 passed by the Special Judge (CBI), Haryana, whereby his application moved under Section 311 Cr.P.C. read with Section 165 of the Indian Evidence Act seeking direction to call Dr. J.P. Chaudhary as Court witness for examination in case FIR No. RC No.10(S)/2003/SCB/CHD dated 09.12.2003 has been declined.

Learned senior counsel for the petitioner while making referene to the statement of Dr. J.P. Chaudhary, the then Medical Superintndent, General Hospital, Sirsa and deposition of PW3 Anshul

Chhatarpati son of Ram Chander Chhatarpati submits that the summoning of Dr. J.P. Chaudhary for examination in cross is not only relevant rather necessary but the prosecution has dropped him as a prosecution witness while his testimony is essential to appreciate the incident. He submits that the deceased had made a dying declaration to Dr. J.P. Chaudhary, who has been cited as witness by the CBI and his statement was recorded under Section 161 Cr.P.C. Dr. J.P. Chaudhary was the person present beside Ram Chander Chhatarpati (since deceased) when he was admitted in General Hospital, Sirsa and he has given statement to the CBI that patient Ram Chander Chhatarpati was conscious and was able to speak and he when asked about his well being where Ram Chander Chhatarpati (since deceased) had replied that he was shot by someone, but he did not disclose the name of any person, who had attempted to kill him. Therefore, statement of Dr. J.P. Chaudhary is relevant and he be directed to be produced as Court witness.

Learned counsel for the petitioner further relied upon ***State of Punjab vs. Surjit Singh 2008(1) RCR (Criminal) 266*** and ***Din Dayal vs. State of Punjab 2014(1) RCR (Criminal) 502*** to contend that when prosecution alleged that the material witness has been won over by the accused, it is still necessary that such witness be examined to reveal the truth.

I have heard learned counsel for the petitioner.

It is not disputed that the deceased Ram Chander Chhatarpati was treated by Dr. J.P. Chaudhary and PW6 Dr. Dale Singh and both the doctors have not claimed that the patient namely Ram Chander Chhatarpati (since deceased) had ever disclosed the name of

any person, who shot at him and accordingly, the CBI has not come with the version that the deceased ever disclosed the name of any assailants to either of the doctors. Anshul Chhatarpati, who is son of the deceased Ram Chander Chhatarpati was admittedly accompanying him and deceased had disclosed the names of assailants to him. Thus, when Ram Chander Chhatarpati had not disclosed the names of assailants to Dr. J.P. Chaudhary, the question of summoning him does not arise. So far as the case of **Surjit Singh** and **Din Dayal** (supra) are concerned, they are quite distinguishable and are not attracted to deal with the present proposition. Present is a case where material witness has not been win over whereas the cases (supra) are the cases where the witnesses were win over. Therefore, these judgments are not applicable in the facts and circumstances of the present case. The statement of PW3 Anshul Chhatarpati is very categorical. He took his father to Civil Hospital in the car of his neighbour Resham Singh.

The Apex Court in the case of **Rajaram Prasad Yadav vs. State of Bihar and another 2013(3) RCR (Criminal) 726** has laid down the principle required to be kept in mind while dealing with the application under Section 311 Cr.P.C and case of the petitioner does not fall within these parameters.

From the perusal of the order passed by the learned Special Judge, CBI Court, it is emphatically clear that Dr. J.P. Chaudhary and PW6 Dale Singh have no where claim that the patient Ram Chander Chhatarpati (since deceased) had ever disclosed the name of anyone, who shot at him and it has been recorded that it is Anshul Chhatarpati (PW3), who was accompanying his father Mr. Ram Chander Chhatarpati

(since deceased) and had disclosed the name of assailants to him and not to someone else.

Trial Court has rightly observed that filing such application is aimed at to prolong the trial as the FIR in the case was registered by the CBI on 09.12.2003.

In view of the above, this Court finds no infirmity or illegality in the order passed by learned Special Judge (CBI), Haryana and the same is hereby dismissed being devoid of any merits.

January 08, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE