

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-38706 of 2016 (O&M)

Date of Decision: February 09, 2017

Rajender son of Shri Nathu RamPetitioner

Versus

Sitaram and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Mohit Jaggi, Advocate for the petitioner.

Mr.Chanderhas Yadav, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.

CRM No.3797 of 2017

With the consent of the counsel appearing for the parties, the date fixed in the main case i.e. 7.3.2017 is pre-poned to today and the main case is taken up for hearing today itself.

2. Application is disposed of.

Main case

3. In pursuance to a complaint filed by the present petitioner, private respondents herein were summoned to face trial for commission of offence punishable under Sections 147, 148, 149, 323, 452, 427, 506 of the Indian Penal Code vide summoning order dated 21.5.2014 passed by the Sub Divisional Judicial Magistrate, Mohindergarh. Complainant/ petitioner filed an application dated 15.9.2016 under Section 311 of the Code of Criminal Procedure for summoning of Dr.Sandeep, DMS, PGIMS

Rohtak who identified the signatures of his erstwhile colleague, namely, Dr.Deepika, Medical Officer, X-ray Department, PGIMS Rohtak and who had conducted the x-ray of mother and father of the complainant.

4. The instant petition filed under Section 482 of the Code of Criminal Procedure is directed against order dated 30.9.2016 at Annexure P6 whereby the aforenoticed application under Section 311 of the Code of Criminal Procedure has been declined.

5. Brief facts that emanate from the pleadings on record are that the criminal complaint was lodged by the complainant/present petitioner in relation to the alleged occurrence that took place on 3.8.2011 and wherein the complainant as also his father and mother and others were assaulted by the accused party/private respondents herein. In the occurrence, apart from others, Bimla Devi i.e. mother of the complainant is stated to have been hit by a stone. Bimla Devi as also Nathu who suffered injuries were referred to PGI Rohtak. Apparently, an x-ray was done at PGIMS Rohtak and which revealed a fracture.

6. The application had been preferred by the complainant under Section 311 of the Code of Criminal Procedure on the ground that Dr.Deepika had left her employment in PGI and her whereabouts are not known and, accordingly, Dr.Sandeep, DMS, PGIMS Rohtak who had been working alongwith Dr.Deepika be summoned to identify her signatures and writing so as to prove the relevant medical record.

7. Perusal of the impugned order shows that Sub

Divisional Judicial Magistrate, Mohindergarh while declining application under Section 311 of the Code of Criminal Procedure has observed that the complainant since the very inception was aware that Dr.Deepika had conducted x-ray of Bimla but no efforts had been made to prove the x-ray report. Complainant is stated to have failed to give his list of proposed witnesses and now at the stage when complainant's evidence is to close and just to linger the proceedings, the application has been moved to examine some other Doctor to prove the x-ray report. On such line of reasoning, the impugned order has been passed.

8. Learned counsel for the parties have been heard.

9. Section 311 of the Code of Criminal Procedure reads as under:

“311. Power to summon material witness, or examine person present – Any Court may, at any stage of any inquiry, trial or other proceeding 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; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

10. The parameters for exercise of powers under Section 311 of the Code of Criminal Procedure are now well settled. It has been repeatedly held that the power to summon any person as a witness can be exercised if the examination of such witness is

essential for the just decision of the case. Further more, such power can be exercised at any stage of trial.

11. Adverting back to the facts of the present case, it may be noticed that along with the complaint, the complainant had submitted the list of witnesses at Annexure P1 and in which the name of Dr.Deepika, Medical Officer, X-ray Department, PGIMS, Rohtak figured at Sr.No.11. Dr.Deepika was even examined as CW9 at the stage of pre-summoning evidence. Copy of the statement of CW9 Dr.Deepika dated 27.9.2013 is placed on record and is in the following terms:

"CW9 Dr.Deepika resident in the department of Radio diagnosis PGIMS, Rohtak

on SA

I have done x-ray of Bimla w/o Nathu Ram on 3.8.2011 and found fracture of left radius bone. The certified copy of my x-ray report is Ex.DW9/A which bears my signature and on the same day I also conducted the x-ray of Nathu Ram s/o Bihari Lal on 3.8.2011. I found fracture of left radius and proximal phalange of ring finger of right hand. The certified copy of my x-ray report is Ex.CW9/B. It bears my signature. I have also brought the original x-ray register today in the Court.

Recorded under my supervision and dictation.

RO&AC

Sd/-Dr.Ashok Kumar

Sd/- Deepika

ADJM, M/Garh.Dt.27.9.13"

12. The application under Section 311 of the Code of

Criminal Procedure was moved by the complainant on the basis that Dr.Deepika has left her employment and her whereabouts are not known. Accordingly, the prayer was to summon Dr.Sandeep, DMS, PGIMS, Rohtak and who had worked along with Dr.Deepika and who could possibly identify the signatures and writing of Dr.Deepika.

13. In the considered view of this Court, the application moved by the complainant under Section 311 of the Code of Criminal Procedure was liable to be accepted.

14. The objections raised by Mr.Chanderhas Yadav, learned counsel appearing for the private respondents that medical record prepared by the complainant is false and fabricated and the complainant with an ulterior motive wants to examine another Doctor to prove the x-ray report allegedly conducted on the person of CW Bimla Devi, may not be gone into in the present petition. Suffice it to observe in this regard that even if Dr.Sandeep is summoned by virtue of exercise of powers under Section 311 of the Code of Criminal Procedure, it would always be open for the accused party to raise all pleas as may be available to them in accordance with law including pleas with regard to the evidentiary value of the deposition of Dr.Sandeep.

15. For the reasons recorded above, the present petition is allowed. The impugned order dated 30.9.2016 passed by the trial Court declining the application under Section 311 of the Code of Criminal Procedure is set aside.

16. Trial Court is directed to accept the prayer made by the complainant/present petitioner in the application dated

15.9.2016, Annexure P4, filed under Section 311 of the Code of Criminal Procedure and to proceed further thereafter in accordance with law.

17. Petition is allowed and disposed of in the aforesaid terms.

February 09, 2017

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: *Whether speaking/reasoned?* *Yes/No*
Whether Reportable? *Yes/No*