

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

CRM No.M-8321 of 2016 (O&M)

Date of Decision: August 21, 2017

Lajjo Devi and another

...Petitioners

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Krishan Singh, Advocate
for the petitioners.

Mr.B.S.Virk, Deputy Advocate General, Punjab
for the respondent-State.

Mr.Naveen Jaglan, Advocate
for respondents No.2 to 4.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. against State of Haryana and other respondents for quashing the order dated 21.01.2016 passed by learned Judicial Magistrate Ist Class, Naraingarh, whereby the application under Section 311 Cr.P.C. filed by the petitioners was dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2 to 4 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that during the pendency of the trial, an application under Section 311 Cr.P.C. was filed by the complainant. The brief averments of the application as noted in the impugned order passed by learned JMIC, Naraingarh, are as under:-

“2. Brief facts of the present application are that the allegations contained in the FIR, the specific attribution of injury against the accused persons armed with deadly weapon causing grievous injury by using sharp edge weapon resultantly, the injury Subhash was medically examined vide MLR No.VM/29/2010 dated 16.12.2010 conducted by Dr.Vishal Moudgil and thereafter injured was advised for x ray and the opinion was kept pending for ortho consultation. It is further stated that at the first instance, the FIR was got registered on the basis of statement of complainant under section 323, 324, 427, 448, 506 IPC and thereafter the opinion was sought from the ortho doctor concerned and he opined that injury no.3 as grievous injury caused by sharp edge weapon but later on the local police in connivance with Madan Lal got registered another FIR No.11 dated 08.01.2011 in Police Station Naraingarh on basis of criminal complaint against the complainant party in the present FIR under Section 196, 211, 324, 326, 506 and 120-B IPC showing the injury no.3 as detailed above in the MLR No.VM/29/2010 dated 16.12.2010 as corruptly procured for the wrong implication of Madan Lal etc and thereafter submitted the challan report under Section 173 Cr.P.C. against the complainant party however the lrd. Trial Court i.e. SDJM Naraingarh after hearing the rival contention of the parties framed a charge under Section 196, 211, 506 read with 34/120-B IPC against the complainant party vide order dated 10.03.2014 copy of charge sheet also attached.

3. It is yet to be established as to whether the allegation as detailed in the FIR No.11 dated 08.01.2011 against the complainant i.e. Subhash are true or not. It is further stated that the witness namely Dr.Amrish Mangla and Dr.Shalini Sharma Medical Officer GH Naraingarh and criminal Ahlmad are necessary witnesses, who are required to be examined for proving the opinion dated 10.01.2011 showing the nature of injury as grievous caused by sharp edge weapon constituting the offence under Section 326 IPC. It is further stated that being prosecution witness, the doctor examined in the present case, also opined the nature of injury as grievous being caused by sharp edge weapon. It is further stated that the local police had intentionally got sighted the above said witness proposed to be summoned by way of this application into the list of

witnesses in connivance with accused person. The complainant also reserves her right to file application for amendment of charge attracting section 326 IPC against the accused person. It is further stated that this learned court has ample power to permit the prosecution complainant to examine any witness relevant though not named in the list of witnesses and even otherwise no prejudice shall be caused to the accused as the opportunity of cross examination to the witness proposed to be summoned by way of his application is always open to the accused. Hence the present application is filed.”

Learned Magistrate, after going through the record and after hearing the parties held that the complainant wanted to summon Dr. Amrisha Mangla and Dr. Shalini Sharma along with x-ray report and MLR of Subhash as well as record of opinion dated 10.01.2011 addressed to the police regarding injury no.3 in the above said MLR as well as another witness i.e. Criminal Ahmad along with original trial Court record.

Learned Magistrate held that in the present case, already the evidence of the prosecution has been closed by order of the Court vide order dated 24.09.2015. The charges were framed on 23.04.2011 and since then, 19 effective opportunities had been availed by the prosecution to lead evidence. On 03.09.2015, it was ordered by the Court that all unexamined PWs be also summoned through DSP (Rural) for the date fixed and it shall be the last and final opportunity and prosecution was also directed to conclude its evidence on the next date of hearing, failing which the evidence of the prosecution shall be deemed to be closed. On 24.09.2015, it was 20th opportunity to lead the evidence but no PW was present and on the very same day, the evidence of the prosecution was closed by order.

Keeping in view the facts and circumstances of the present case, first of all, I find that the evidence of the prosecution has been closed

by order after giving 20 effective opportunities. Furthermore, charges were framed in the year 2011 and evidence was closed about after four years of the framing of the charges. Secondly, the petitioners want to summon the witnesses and record etc., which is not essential for the just decision of this case. The FIR has already been filed for procuring false injury on the tip of little finger and learned trial Court, in that case, has not given any finding so far. Otherwise also, the prosecution kept silent for the last about more than five years after the presentation of challan.

In view of the above discussion, I find that no illegality has been committed by learned JMIC, Naraingarh, while passing impugned order dated 21.01.2016.

Therefore, finding no merit in the present petition, the same is dismissed.

August 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No