

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

**CRM-M No.639 of 2017  
Decided on: 27.11.2017**

Jasbir Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**

**Present :** Mr. Deepak Sharma, Advocate  
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. R.K. Saini, Advocate for respondents No.2 to 10.

**ARVIND SINGH SANGWAN, J.**

Prayer in this petition is for setting-aside the order dated 16.08.2016 (Annexure P11) passed by the trial Court vide which the application filed under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C') for summoning Dr. Ankur Gupta from PGIMER, Chandigarh as a prosecution witness has been dismissed.

Brief facts of the case as per the allegations in the FIR are that on 17.11.2009, the respondent No.5 had a quarrel with the petitioner and later on, the matter was compromised. However, on the next day i.e. 18.11.2009, respondents No.5 and 7 caused injuries to the cousin brother of the petitioner namely Buta Singh and he was medico legally examined. Thereafter, a complaint was moved to the police, however, the police without taking action forced them to compromise the matter in the village. Again on the same day at about 08:00 PM all the private respondents forcibly entered in the house of cousin brother

of the petitioner namely Dilbagh Singh armed with sharp edged weapons like axe, swords, iron rods and sticks and attacked upon the petitioner and his mother Smt. Amrit Kaur, his aunts, Smt. Pal Kaur and Smt. Jarnail Kaur, his sister-in-law Smt. Manjit Kaur, his uncle Sh. Gurdev Singh, his cousin brother Dalbir Singh and caused injuries to them. All of them were saved by the witnesses and thereafter, the police took all the injured persons to P.H.C. Naggal and from there, they were referred to the Civil Hospital, Ambala. Considering the serious conditions of Pal Kaur and Amrit Kaur, both of them were referred to the PGIMER, Chandigarh and thereafter, in this regard FIR No.74 dated 19.11.2009 under Section 148, 149, 323, 452, 506 of the Indian Penal Code (in short 'IPC') was registered at Police Station Naggal, District Ambala.

Counsel for the petitioner has submitted that the order dated 16.08.2016 dismissing the application filed by the petitioner under Section 311 Cr.P.C. is not sustainable as the Investigating Officer intentionally has not made Dr. Ankur Gupta of PGIMER, Chandigarh as a prosecution witness despite the fact that he has treated the injured witnesses namely Pal Kaur and Amrit Kaur.

Counsel for the petitioner has referred to the 02 enquiry reports conducted on the complaint filed by the petitioner against the faulty investigation by the Investigating Officer i.e. SHO Prem Chand, ASI Juna Ram and ASI Laxmi Chand of Police Station Naggal. The Additional Deputy Commissioner, Kurukshetra vide its enquiry report dated 27.01.2014 (Annexure P3) has observed as under:-

*“Therefore, complaint made by complaint,*

*statement, documents attached with the statements as per list (Page No.1 to 182) including medical report of PGI, photocopy of FIR, photocopy of log book filled by the then DCP Sh. Rameshwar Dass, enquiry report into the complaint conducted by Sub Divisional Officer (C), as per directions of the Grievances Redressal Committee, District Ambala, report of FSL, Madhuban, other documents, statements of Sh. Rameshwar Dass Sharma, DCP, SHO Sh. Prem Singh, Police Station Naggal, ASI Sh. Inderjit, ASI Sh. Juna Ram and ASI Sh. Lakhmi Chand have been carefully perused. After perusing the same, I have come to the conclusion that non joining of the then D.C.P., Sh. Rameshwar Dass in the enquiry, non performing of duty by Sh. Inderjit Singh, ASI in a proper manner during getting conducted the medical examination, the allegation levelled by complainant that signatures of his cousin Sh. Jasbir Singh were obtained on a blank paper, appears to be proved because in case victim would himself write that he was attacked with lathi and dandas, then why he would make complaint further. Page 18 of the statement, so far as allegation against SHO Sh. Prem Singh, Sh. Juna Ram, ASI, Police Station Naggal and ASI Lakhmi Chand is concerned that they committed high-handedness to close the complaint, there is no proof on the file in this regard. Thereafter, I have come to the conclusion that it appears that Sh. Rameshwar Dass, the then D.C.P., ASI Sh. Inderjit and Dr. Rajinder Rai of Civil Hospital have violated the rules.”*

Counsel for the petitioner has further relied upon another report submitted by the Commissioner, Ambala Division to the Director General of Police, Haryana and Director Health Services, Haryana and Additional Chief Secretary for taking legal action against the arraying officials. The operative part of the said report reads as follows:-

*“From the perusal of all the facts and documents, the working of SHO Prem Chand, ASI Juna Ram and ASI Lakshmi Chandi appears to be suspicious. No specific mention in the complaint, similar statements, recording of statements of the family, who has grudge with Dilbagh Singh and recording statements of mentally weak persons namely Dev Khan and Om Parkash towards it. But as original complaint bears the signatures of Sarpanch and other panches and also signatures of residents of village, who later retracted, it is difficult to state it on solid basis. Apart from the Dilbagh Singh has never been taken into custody, nor physically tortured. It appears that efforts were made to apply illegal and mental pressure in the whole manner.”*

Counsel for the petitioner has further relied upon the letters written by the authorities for taking departmental action against the faulty investigation. It is further submitted that the aforesaid reports were relied upon by the trial Court while passing an earlier order dated 04.03.2015 by allowing the application for recalling a witness namely Dr. Kiranmayi of PGI. Counsel for the petitioner has also submitted that the petitioners were availing their remedy before the various authorities for the proper investigation of the case as is clear from the enquiry reports (Annexures P3 and P4). In the intervening period, evidence before the trial Court was going on and, therefore, the petitioner could not move the application under Section 311 Cr.P.C. for summoning Dr. Ankur Gupta, the treating doctor of injured witnesses, though, he was not cited as a prosecution witness in the report submitted under Section 173 Cr.P.C. Counsel for the petitioner has further submitted that it is apparent that the said witness i.e. Dr. Ankur Gupta of PGIMER,

Chandigarh has not been cited as a witness by the Investigating Officer in collusion with the accused persons to give them undue benefit and the trial Court has dismissed the application only on the ground of delay, which is well explained that the petitioner and other injured persons were availing their remedy before the various authorities regarding faulty investigation and, therefore, merely on account of non-citing the treating doctor i.e. Dr. Ankur Gupta of PGIMER, Chandigarh as a prosecution witness, the application has been wrongly dismissed by the trial Court.

On the other hand, counsel for the respondents has submitted that charge in this case was framed on 22.04.2010 and evidence of the prosecution was closed on 17.12.2015 and the present application has been moved on 29.03.2016 and, therefore, the same is liable to be dismissed on account of delay and there is no proper explanation given in the application as to why this application was not moved on an earlier occasion when the prosecution evidence was going on. It is also submitted that since Dr. Ankur Gupta was not cited as a prosecution witness, he cannot be permitted to be examined under the aid of Section 311 Cr.P.C. Counsel for the respondents has relied upon ***“A.G., vs Shiv Kumar Yadav and another”*, 2015(4) RCR (Criminal) 312** where the Hon'ble Supreme Court has held that the power of judicial superintendence under Section 482 Cr.P.C. has to be exercised sparingly when there is patent error or gross injustice is caused to a party. It is also submitted that it has been held in the said judgment that the Court must assign reasons for allowing the application filed under Section 311 Cr.P.C. In view of the judgment passed by the Hon'ble

Supreme Court, it is further submitted on behalf of the respondents that the trial Court has passed a well-reasoned order while dismissing the application under Section 311 Cr.P.C.

It may be noticed here that another petition i.e. CRM-M No.44208 of 2015 filed by the petitioner challenging the order dated 17.12.2015 closing evidence by Court order, has been allowed by this Court after noticing the various interim orders passed by the trial Court as well as conduct of the respondents/accused who have taken number of adjournments for examination of prosecution witnesses and vide order dated 22.11.2017 passed by this Court, one opportunity has been granted to the prosecution to allow the injured witnesses namely Pal Kaur and Amrit Kaur to be examined as prosecution witnesses. Dr. Ankur Gupta of PGIMER, Chandigarh is the same doctor who has treated the aforesaid two injured namely Pal Kaur and Amrit Kaur at PGIMER, Chandigarh.

After hearing counsel for the parties and in view of the fact that there is sufficient material on record to show that the police has not conducted a fair investigation in view of the two enquiry reports submitted by the Additional Deputy Commissioner, Ambala as well as the Deputy Commissioner, Ambala, recommending disciplinary proceedings against the erring officials, the non-citing of Dr. Ankur Gupta as a prosecution witness is well-explained by the petitioner/complainant. Though, the application has been filed by the complainant after closing of the evidence of the prosecution, yet in my opinion, the statement of Dr. Ankur Gupta, who has treated the injured witnesses namely Pal Kaur and Amrit Kaur at PGIMER, Chandigarh, is

necessary to prove the injuries sustained by them and, therefore, I hold that the application filed by the petitioner under Section 311 Cr.P.C. deserves to be allowed and order dated 16.08.2016 is set-aside on the following grounds:

i. Firstly, the investigation conducted by the Investigating Officer has been found to be tainted in view of the reports (Annexures P3 and P4) vide which the Commissioner of Police, Ambala Division has recommended action against SHO/Investigating Officer as well as the doctor of civil hospital.

ii. Secondly, the delay in filing the application is explained because these reports are dated 17.02.2014 and 29.08.2014, which itself show that the petitioner/complainant was pursuing his remedy on administrative side for non-citing this witness i.e. Dr. Ankur Gupta.

iii. The mere fact that a witness is not cited in the list of witnesses attached with the report under Section 173 Cr.P.C. is not a ground to reject the application filed under Section 311 Cr.P.C. It is well settled principle of law that the Court, in order to do justice is competent to allow an application filed under Section 311 Cr.P.C. even if a witness is not cited by the police.

iv. Since vide separate order dated 22.11.2017, the two injured witnesses who were treated by Dr. Ankur Gupta are allowed to be examined as a witness, it will be in the interest of justice that on the same day, this witness namely Dr. Ankur Gupta is also allowed to appear before the trial Court so as to enable the trial Court to record a cogent finding about the nature of injuries sustained by the aforesaid two injured persons namely Pal Kaur and Amrit Kaur.

v. In view of the judgment relied upon by counsel for the respondents ***A.G's case (supra)***, I find that it is a case where the High Court can exercise its power under Section 482 Cr.P.C. to allow this application as it will cause injustice to the complainant if the statement of the doctor who has been with-

held by the Investigating Officer is not permitted to be recorded.

In view of the above, the present petition is allowed and the trial Court is directed to record the statement of Dr. Ankur Gupta on the same day when the other 02 witnesses namely Pal Kaur and Amrit Kaur would be recorded after affording due opportunity to counsel for the respondents/accused to cross-examine the said witnesses.

(ARVIND SINGH SANGWAN)  
JUDGE

27.11.2017  
yakub

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable:       | Yes/No |