

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

**CRR No.52 of 2017
Date of Decision: 16.01.2017**

Rajesh Jain

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vijay Rana, Advocate
for the petitioner.

ANUPINDER SINGH GREWAL J. (ORAL)

The petitioner has challenged the order dated 29.11.2016 passed by the Appellate Court whereby the application of the petitioner under Section 391 Cr.P.C. read with Section 311 Cr.P.C. for allowing him to lead additional evidence has been dismissed.

FIR No.26 dated 10.05.2001 under Sections 323, 324 read with Section 34 IPC was registered at Police Station Division No.3 Ludhiana against the petitioner. The occurrence is alleged to have taken place on 09.05.2001. Cancellation report was filed by the police and protest petition there against was filed by the complainant and the trial Court had directed that protest petition be treated as complaint. After recording evidence, the trial Court vide order dated 09.05.2013 convicted the petitioner under Sections 323, 324 read with Section 34 IPC and sentenced him to undergo simple imprisonment for 06 months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for 15 days.

The petitioner preferred an appeal before the lower Appellate Court. During the pendency of the appeal, the petitioner moved an application on 20.01.2015 for recalling Dr. Manmohan Singh-CW2 and Dr. Raj Pal Singh Grewal-CW3 for further cross examination. This application was dismissed by the Appellate Court on 30.03.2015. The petitioner again moved an application for leading additional evidence on 16.09.2015 and sought to produce letter issued by Dr. A. S. Thind, Advisor, Medico Legal to Government of Punjab and copy of MLR dated 09.05.2001. This application was dismissed on 23.05.2016. Thereafter, the petitioner has moved an application for recalling both the aforementioned Doctors as well as of leading additional evidence including opinion of the Medical Board which has been dismissed vide the impugned order.

I have heard learned counsel for the petitioner.

It is apparent that the occurrence took place on 09.05.2001 and medical examination of the accused was also conducted on the same date i.e. 09.05.2001. The petitioner was convicted by the trial Court on 09.05.2013. When the aforementioned Doctors had appeared as CW-2 and CW-3, full opportunity had been granted to the petitioner to cross examine them. It has been recorded by the Appellate Court in the impugned order that when Dr. Manmohan Singh had appeared in the witness box, no suggestion was put to him that the MLR have been forged, fabricated or tampered.

It deserves to be noticed that the earlier two applications preferred by the petitioner for recalling the aforementioned two Doctors as well as to lead additional evidence for producing a letter of the Advisor, Medico Legal to Government of Punjab had already been dismissed by

the Appellate Court vide orders dated 30.03.2015 and 23.05.2016. These orders have not been challenged by the petitioner and have thus attained finality.

Furthermore, the petitioner has not been able to set out any case whatsoever as to why he could not obtain and produce the aforementioned documents in the course of trial. He has also not been able to make out any case with regard to any change in circumstances which had earlier prevented him from leading the evidence which is now sought to be produced on record. It is well settled that power to permit additional evidence has to be exercised by the Appellate Court after due care and caution and only when the Court is satisfied that the absence of the additional evidence which is sought to be produced would result in failure of justice. The power must be exercised sparingly and only in suitable cases. Reference can be made to the judgment of the Supreme Court in the case of “*Rajeshwar Parshad Mishra vs. State of Bihar*”, reported as *AIR 1965 SC 1887*.

Therefore, I do not find any manifest illegality in the impugned order dismissing the application for leading additional evidence. In the result, the petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

January 16, 2017

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No