

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-12388-2016 (O&M)

Date of decision: 11.09.2018

Tejvir

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

**PRESENT:** Mr. Anil Malik, Advocate for the petitioners.

Mr. Vikramjit Singh, Addl. A.G., Haryana.

Mr. Kamal Kant Verma, Advocate  
for respondents No. 2 to 6.

**RAMENDRA JAIN, J. (ORAL)**

Through this petition under Section 482 Cr.P.C., the complainant-petitioner has assailed order dated 28.07.2015 (Annexure P-2), whereby his application under Section 311 Cr.P.C., for summoning Dr. Montu Jain of PGIMS Rohtak, who has given his expert opinion regarding nature of injuries suffered by the complainant-petitioner was dismissed and order dated 11.09.2015 (Annexure P-4) of the Revisional Court, affirming the said order.

In nutshell, respondents No. 2 to 6 are facing trial in case FIR No. 53 dated 03.02.2009 under Sections 148, 149, 341, 323, 325 and 506 IPC at Police Station Sadar Dadri, lodged by the petitioner. During trial, despite best possible efforts made by the trial Court, to summon Dr. Montu Jain, cited as a witness by the Investigating Officer in final

report under Section 173(2) Cr.P.C., as he had given his opinion regarding nature of injuries to the complainant, his presence could not be secured even by issuance of his bailable and non-bailable warrants. Thus, finding no other option, the trial Court closed the prosecution evidence vide order dated 03.07.2014. When the petitioner came to know about the above fact, he immediately within two months moved application dated 08.09.2014 (Annexure P-1) under Section 311 Cr.P.C., to summon and examine the said doctor being a necessary prosecution witness. The trial Court after hearing both the sides dismissed the same vide order Annexure P-2.

Being aggrieved, the petitioner approached the Revisional Court for setting aside the aforesaid order Annexure P-2, but remained un-successful as his revision too was dismissed vide order Annexure P-4.

Learned counsel for the petitioner *inter alia* contends that both the Courts below have erroneously dismissed application (Annexure P-1) of the petitioner illegally on the ground that he wanted to delay the trial.

On the other hand, learned counsel for respondents No. 2 to 6 vehemently opposing the submission of learned counsel for the petitioner contends that both the Courts below, after taking into consideration that the prosecution despite availing 20 effective opportunities to conclude its evidence did not complete the same, have rightly dismissed the application of the petitioner. More so, application (Annexure P-1) of the petitioner under Section 311 Cr.P.C., is a counter-blast to the complaint filed by respondents No. 2 to 6 against him under

Sections 148, 323, 325, 506, 149 IPC, in which he was summoned to face trial. The petitioner challenged the said summoning order before this Court in CRM-M-36308-2015 and has obtained stay vide order dated 21.10.2015, which is still pending adjudication before this Court.

Having given thoughtful consideration to the rival submissions made by learned counsel for both the sides, this Court finds merit in the instant petition for the reasons to follow:

No fault lies with the petitioner, in case, presence of Dr. Montu Jain, cited as prosecution witness by the Investigating Officer in the list of witnesses filed along with final report under Section 173(2) Cr.P.C., could not be secured by the Court, despite issuance of his bailable and non-bailable warrants. It was bounden duty of the trial Court to secure his presence by all means and to record his testimony, in view of the fact that he was the material prosecution witness having been given his expert opinion qua nature of injuries suffered by the petitioner.

Non-conclusion of its evidence by the prosecution even after availing 20 effective opportunities in a span of three years, has much weighed in the mind of trial Court, ignoring the fact that it was its bounden duty to secure the presence of prosecution witnesses ignoring the fact that petitioner-complainant had no role in the same.

In case, presence of prosecution witness, namely; Dr. Montu Jain, could not be secured, despite issuance of his bailable and non-bailable warrants, it was incumbent upon the trial Court to adopt more coercive methods to secure his presence by attaching his immovable property and declaring him as proclaimed person.

The whole controversy in the instant case revolves around nature of injuries suffered by the petitioner at the hands of respondents No. 2 to 6, therefore, examination of Dr. Montu Jain, who had given opinion about the nature of injuries is very much necessary.

In view of the discussion made above, the instant petition is allowed and both the impugned orders dated 28.07.2015 and 11.09.2015 (Annexures P-2 and P-4, respectively) are set aside, with a direction to the trial Court to secure the presence of Dr. Montu Jain, by adopting all coercive methods and proceed further with the trial, in accordance with law. The prosecution is also directed to assist the trial Court effectively, in securing the presence of Dr. Montu Jain, aforesaid.

September 11, 2018  
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( RAMENDRA JAIN )  
JUDGE

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