

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

Sr. No.242

CRM-M-34194 of 2016
DECIDED ON: October 11, 2018

DR. JASBIR SINGH

..PETITIONER

VERSUS

DR. V.K. GUPTA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Ramesh Hooda, Advocate,
for the petitioner.

Mr. Amarjit Singh Virk, Advocate,
for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., petitioner has laid challenge to order dated 19.08.2016 (P-10) passed by the Revisional Court, affirming order dated 05.10.2015 (P-8), whereby application of the petitioner under Section 311 Cr.P.C. for summoning three witnesses in additional evidence was rejected.

Briefly, petitioner filed a complaint under Section 499, 500 and 506 IPC against the respondent on the allegations that after completion of his Ph.D. in the month of August, 2000 from Germany, complainant

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rejoined his duty as Lecturer and remained posted as such till November, 2001. After grant of Senior Scale to him, he was promoted as a Reader in the year 2006. During his stay at Germany, the complainant was diagnosed suffering with Hepatitis B. Therefore, returning to India, complainant started taking treatment from P.G.I. Chandigarh. All his medical expenses have been paid to the complainant by his employer i.e. Kurukshetra University. However, the behavior of the respondent towards complainant became rude and therefore, he started harassing the complainant regularly by using filthy and derogatory language in spoken and written manner. Respondent also issued various show cause notices to the complainant for no reason, just to harass him. Respondent crossed all limits on 27.06.2007, when he wrote a letter to the Vice Chancellor, K.U.K., that disease of the complainant, being a communicable one, can, therefore, spread amongst the staff and students endangering their life, which had intimidated and caused harm to the reputation of the complainant.

Upon recording preliminary evidence, respondent vide order dated 30.09.2018 was summoned under Section 500 IPC. Recording pre-charge evidence of the petitioner, the trial Court charge-sheeted the respondents on 07.09.2011. In after charge evidence, the petitioner sought examination of one additional witness namely Vikram, for which he was refused vide order dated 02.02.2013 on the ground that the said witness was not examined in pre-charge evidence. Therefore, his statement could not have been recorded after charge evidence.

Being aggrieved, petitioner preferred a revision against the said order, declining his prayer for examination of Vikram as additional witness, which too, was dismissed by the Revisional Court on 03.02.2014.

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Still dissatisfied, petitioner approached this Court by way of CRM-M-7284 of 2014, which was dismissed as withdrawn vide order dated 26.05.2015 (P-6). Thereafter, petitioner closed his after charge evidence. Statement of the respondent under Section 313 Cr.P.C. was also recorded. At the fag end of the trial, at the stage of defence evidence, the petitioner moved another application under Section 311 Cr.P.C. for examination of three additional witnesses, which was dismissed vide impugned order dated 05.10.2015 (P-8).

Being aggrieved, petitioner again approached the Revisional Court, vide order 19.08.2016 (P-10), dismissed his revision petition.

Learned counsel for the petitioner contends that the statements of three additional witnesses sought to be examined by the petitioner are very much necessary to refute the allegations of the respondent that disease Hepatitis 'B' from which the petitioner was suffering, is not a communicable disease. Thus, the same is not spreadable and dangerous to students or his colleague. Two others are the students, in whose eyes and opinion, the reputation of the petitioner had lowered down.

On the other hand learned counsel for the respondent pleading the legality and validity of the impugned order contends that application under Section 311 Cr.P.C. moved by the petitioner at the fag end of the trial was nothing, but a deliberate attempt to delay the conclusion of the case. By way of aforesaid application, petitioner wanted to re-open the entire case, which in law is not permissible. Even otherwise, application of the petitioner under Section 311 Cr.P.C. was an attempt to fill up a lacuna.

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After giving thoughtful consideration to the submissions made by both sides, this Court finds the instant petition completely devoid of merits for the reasons to follow:

1. The complaint was instituted by the petitioner against respondent on 15.01.2008. The impugned application under Section 311 Cr.P.C. (Annexure P-7) was filed by petitioner on 04.07.2015 after more than seven years. Therefore, by that time, respondent had already faced a protracted trial for such a long period.

The additional witnesses sought to be summoned by the petitioner by way of additional evidence, were never cited in the list of witnesses at the time of filing of complaint. In fact, no list of witnesses was filed by the petitioner at the time of filing of complaint thereby violating mandatory condition and requirement of law under Section 204 Cr.P.C. Even thereafter, petitioner did not make any effort to file list of witnesses, upon which he was relying to support his contention while adducing pre-charge evidence and voluntarily closed the same. Consequently, respondent was charge-sheeted on 07.09.2011. Even thereafter, petitioner kept on sleeping over the matter till 04.07.2015 and awoke out of a great slumber at the defence evidence stage at the fag end of the trial and moved application under Section 311 Cr.P.C. (P-7), without disclosing justification therein as to why the examination of additional witnesses was necessary for adjudication of his complaint, which is again a condition precedent to file such application for the satisfaction of the court as to whether the testimony of the additional witnesses would be essential for just decision of the case.

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The moving of application under Section 311 Cr.P.C. (P-7) by the petitioner at the fag end of the trial, definitely tantamounts to delay adjudication of his complaint and also to fill up a lacuna, inasmuch as without disclosing the relevancy of the statements of witnesses sought to be examined in additional evidence, they could not have been permitted to be examined.

I have gone through the impugned orders passed by the courts below and finding no merit therein, instant petition is dismissed.

October 11, 2018

Ankur

**(RAMENDRA JAIN)
JUDGE**

**Whether speaking/reasoned
Whether reportable**

**Yes/No
Yes/No**