

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-35962 of 2015 (O&M)
Date of Decision: 21.9.2018**

Meena Rani

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. M.S.Batth, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

Mr. D.S.Malwai, Advocate
for respondent No. 2 and 5 to 7.

ANITA CHAUDHRY, J

The petitioner has assailed the order dated 7.10.2015 (Annexure P-3) passed by the Additional Sessions Judge vide which the application moved by the prosecution under Section 311 Cr.P.C. was dismissed.

The petitioner is the prosecutrix who had got an FIR lodged under Section 376, 506 IPC.

The trial had commenced and witnesses were being examined. The prosecution was unable to get service effected on Dr. Geeta Banger who had gone abroad and had settled there after retirement. Finding that the address of Dr. Geeta Banger was not traceable and as number of adjournments had been granted, the trial Court closed the evidence of the prosecution on 14.9.2015. Within a fortnight, an application was moved

under Section 311 Cr.P.C. seeking recall of the order and for examining Dr. Geeta Banger through video conferencing. In the alternative, a prayer was made to summon the record keeper of the Civil Surgeon, Nawanshahr to identify the hand writing and signatures of Dr. Geeta Banger.

The said application was dismissed as it was noted that even till date the matter was argued, the prosecution did not have the contact number nor had furnished the details as to where she was living and in the absence of any particulars, the Court considered the circumstances and dismissed the application and posted the case for defence and arguments.

On the last date of hearing, the petitioner was asked to inform the name of the witness they wanted to examine, namely the record keeper. Now an application has been filed as the petitioner has come to know that Dr. Geeta Banger was in India on holiday and she was residing in Khara Colony, Rahon Road, SBS Nagar. They have also provided her phone number. The prayer now is that they may be permitted to examine Dr. Geeta Banger to prove the MLR.

Counsel for the petitioner contends that Dr. Geeta Banger is now in India and in view of the changed circumstances they may be permitted to examine Dr. Geeta Banger who was cited as a prosecution witness and since her details are available they may be given one opportunity and short date be given as she has to go back towards the end of the month. The counsel further contends that the case is fixed for 4.10.2018 before the trial Court and they would move an application for preponement.

The prayer is opposed by the counsel for the accused. It is stated that the order closing the evidence had not been challenged and therefore they cannot be permitted to bring any other evidence.

The argument raised on behalf of the accused has to be rejected as it has no merit. The trial Court had closed the evidence of the prosecution as the State could not give the address of Dr. Geeta Banger who had settled abroad. A prayer for recording her evidence through video conferencing was made but the petitioner has asserted that Dr. Geeta Banger is in India. Her details and her telephone number are mentioned in CRM-29656-2018. In view of this, the prayer made by the complainant can be allowed. The statement of the medical officer would be necessary for just decision of the case.

The petition is allowed. Order dated 7.10.2015 is set aside.

The parties are directed to appear before the Court below on 26.9.2018. The parties would apprise the Court of the urgency and request the Court for preponement of the case so that the statement of Dr. Geeta Banger can be recorded before she leaves the country. The complainant on their part would also get in touch with Dr. Geeta Banger and also inform the Court.

Copy of this order be sent to the trial Court expeditiously.

(ANITA CHAUDHRY)
JUDGE

September 21, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No