

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-36136 of 2015 (O&M)

DATE OF DECISION: AUGUST 7, 2018

MAHABIR

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

PRESENT: MR. RAMESH GOYAT, ADVOCATE
FOR THE PETITIONER.

MR. RAMESH KUMAR AMBAVTA, AAG, HARYANA.

MR. S.L. BARWALA, ADVOCATE
FOR RESPONDENTS NO.2 TO 6.

HARI PAL VERMA, J.(ORAL)

The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing the order dated 17.9.2015 (Annexure P-5) passed by Sub Divisional Judicial Magistrate, Hansi, whereby the application filed by the petitioner-complainant under Section 311 Cr.P.C. to examine Dr.N.K.Verma, the then Medical Officer, General Hospital, Hansi was dismissed. Challenge has also been laid to the order dated 1.10.2015 passed by the Sessions Judge, Hisar, whereby the revision petition against order dated 17.9.2015 was dismissed.

Briefly stated the petitioner-complainant had filed a compliant against the accused-respondents under Sections 392, 394, 397, 399, 402, 323, 325 and 34 IPC. However, on the basis of preliminary evidence as led by the complainant, the trial Court had ordered summoning of the accused under Sections 323 and 392 read with Section 149 IPC. Dr.N.K.Verma, who was to

be summoned by way of application under Section 311 Cr.P.C. was also examined as CW2 in preliminary evidence, but could not be examined in pre-charge evidence and vide order dated 7.9.2015, the evidence of the complainant was closed on the statement of the complainant.

Learned counsel states that no doubt the complainant has closed the evidence, but the said witness Dr.N.K.Verma who was otherwise examined in the preliminary evidence as CW-2 is a necessary witness to be examined in respect of the injury so suffered by the petitioner. Therefore, by virtue of it, one opportunity be granted to examine the said witness.

On the other hand, learned counsel for respondents No.2 to 6 has argued that once the complainant himself has closed his evidence, there is no justification for the complainant to examine Dr.N.K.Verma at this stage when even the accused have closed their evidence. In case, opportunity is granted to the petitioner to examine Dr.N.K.Verma, it would prejudice to the interest of the accused.

I have heard learned counsel for the parties.

No doubt, the petitioner had closed his evidence by his statement before the Court to that effect, but immediately thereafter, i.e. on 10.9.2015 an application has been filed by the petitioner under Section 311 Cr.P.C. so as to examine Dr.N.K.Verma. Moreover, the said witness was examined as CW-2 in the preliminary evidence. So, it is not the case of the complainant that he has introduced a new witness. Though the complaint was filed under various Sections, the trial Court had issued summons only for the offences under Section 323, 392, 149 IPC. The law of summoning is well interpreted by the

Hon'ble Supreme Court in **Rajaram Prasad Yadav vs. State of Bihar and another, AIR 2013 (SC) 3081**. The matter seems to be pending since 2012 and the present revision petition was filed on 16.10.2015 and vide order dated 20.11.2015, this Court stayed the proceedings pending before the trial Court. Considering the fact that Dr.N.K.Verma was a witness at the time when the complaint was filed and was examined in the preliminary evidence and it was only on 7.9.2015 that the evidence of the complainant was closed which was followed by an application under Section 311 Cr.P.C. on 10.9.2015, this Court finds that the application under Section 311 Cr.P.C. was filed without any inordinate delay.

Having regard to the judgement passed in **Rajaram Prasad Yadav's case (supra)**, this Court finds that one opportunity deserves to be granted to the petitioner so as to examine Dr.N.K.Verma at his own risk and responsibility. Accordingly the petitioner is granted one opportunity and no further opportunity shall be granted, however, subject to payment of ₹10,000/- to the accused-respondents. Further, it is made clear that once Dr.N.K.Verma is ordered to be examined, after the closure of the evidence of the complainant, the accused shall be entitled to lead their evidence accordingly and merely because the evidence of the respondents stands closed shall not debar them to lead their evidence afresh.

Petition stands disposed of.

August 7, 2018
Gulati

(HARI PAL VERMA)
JUDGE

Whether Reportable : Yes
Whether Speaking/Reasoned : Yes/No