

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

CRM-M-44456-2016

Date of Decision: 29.08.2018

Gurcharan Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. H.S. Dhandi, Advocate
for the petitioner.

Mr. Nikhil K. Chopra, Addl. A.G. Punjab.

Mr. G.B.S. Dhillon, Advocate
for respondents No.2 to 6.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has sought for the following relief:

“Setting aside the order dated 12.1.2016 (Annexure P-1) and order dated 29.11.2016 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Ludhiana in case FIR No.142 dated 7.9.2013 under Sections 323/324/325/326/506/148/149 IPC Police Station Meharban, District Ludhiana vide order dated 12.1.2016 (Annexure P-1) Trial Court rejected the request for re-examination of the witness to remove the ambiguity stated by him in cross examination and vide order dated 29.11.2016 (Annexure P-5), application for permission to re-examine the petitioner/complainant and to summon Dr. Shajank Jain, CMC Ludhiana to produce X-ray film of petitioner, Unit No.C-7467476 and to summon record keeper to produce and prove the bed head ticket of petitioner, has been declined.”

2. Short question for consideration in the present petition is rejection of the petitioner's grievance in respect of recalling of Dr. Shajank Jain as a witness for the purpose of recording his evidence as he had not produced x-ray films and produced only x-ray report Ex.PW-6/2. Further

grievance is that petitioner is to be re-examined.

3. Learned counsel for the petitioner submitted that for the purpose of justice, it is required that Dr. Shajank Jain examination be recalled and he has to be examined afresh in respect of production of x-ray films which is the basis for directing and submitting x-ray report Ex.PW-6/2. His re-examination is also necessary as he has left out particular factual aspect when he was examined on 12.1.2016 and in this regard Public Prosecutor had requested on 17.1.2016 for his re-examination

4. Per contra, learned counsel for respondents No.2 to 6 submitted that question of recalling and re-examination of petitioner and Doctor is not permissible having regard to the decision of the Supreme Court in the case of Mishrilal and others v. State of M.P. and others; 2005 (2) Apex Criminal 224 (see: Para-6).

5. Heard the learned counsel for the parties.

6. Perusal of the records, no doubt it is evident that Dr. Shajank Jain has not apprise the Court by producing x-ray films in support of the x-ray report Ex. PW-6/2. In order to render justice, it is necessary to give ample opportunity to the prosecution. Therefore, it is necessary to recall the witness Dr. Shajank Jain and to examine him afresh in view of the lacuna to the extent that Dr. Shajank Jain has failed to produce x-ray films in support of the x-ray report Ex.PW-6/2. Insofar as petitioner's statement and his cross examination is concerned, it is to be noted that on 12.1.2016, he has been examined, even though, Public Prosecutor has requested for re-examination of the petitioner and it was rejected on 12.1.2016. Whereas the application for re-examination of the petitioner was filed only on 24.10.2016. There is a delay in presenting such application. Therefore, no

interference is called for insofar as re-examination of the petitioner. Further proceedings have been taken in the trial proceedings.

7. In view of the above facts and circumstances, petition stands allowed in part and order dated 29.11.2016 (Annexure P-5) is set aside only to the extent of recalling the witness adduced by Dr. Shajank Jain. Trial Court is hereby requested to re-examine Dr. Shajank Jain.

29.08.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**