

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-44627-2016

Date of decision: 31.07.2018

Sunder

..... Petitioner

Versus

Kuldeep Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Vivek Khatri, Advocate for the petitioner.

Mr. Rishab Lohan, Advocate for
Mr. RN Lohan, Advocate for respondents No. 1 to 5.

Mr. Yashwinder Singh, DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

1. Through this petition under Section 482 Cr.P.C., prayer has been made for quashing impugned order dated 01.12.2016 (Annexure P-6) passed by the trial Court, Hisar, whereby application of the petitioner under Section 311 Cr.P.C. has been dismissed.

2. Put pithily, at the instance of petitioner, respondents No. 1 to 5 were booked in case FIR No. 1115 dated 03.12.2012 (Annexure P-1) under Sections 323 and 342 read with Section 34 IPC and Section 325 IPC at Police Station Sadar Hisar, District Hisar and they are facing trial before the trial Court. The prosecution after availing 22 effective opportunities to lead evidence, closed evidence to its entire satisfaction.

3. Thereafter, the petitioner, being complainant moved application under Section 311 Cr.P.C. for examination of Dr. PK Goyal, Medical Officer, Maharaja Agrasen Medical College, Agroha, District Hisar and

Dr.(Prof.) R. Singh, PGIMER, Chandigarh, as additional witnesses from whom the petitioner subsequently got treatment. The trial Court after hearing both the sides, dismissed the aforesaid application of the petitioner vide impugned order Annexure P-6.

4. Learned counsel for the petitioner has relied upon judgments in (i) Mannan SK. And others Vs. State of West Bengal and another, 2014 (13) SCC 59; (ii) State of Haryana Vs. Ram Mehar and others Etc. Etc., 2016(4) RCR (Criminal) 154; (iii) P. Chhaganlal Daga Vs. M. Sanjay Shaw, 2003(11) SCC 486; (iv) Sukhpal Kaur Vs. Arun Kumar, 2016(5) RCR (Criminal) 439; (v) Janeshwar Dutt Vs. Sanjiv Kumar, 2007(2) RCR (Criminal) 628; (vi) Rahul Labroo Vs. Dr. Priya, 2015(4) RCR (Criminal) 69; (viii) Dinesh and others Vs. State of Haryana and others, 2008(1) RCR (Criminal) 128 and (viii) Ram Mehar and others Vs. State of Haryana, 2016(2) RCR (Criminal) 363, to contend that examination of aforesaid two doctors is very much necessary for effective adjudication of the case. The petitioner as complainant cannot be made to suffer for the lapse of Investigating Officer, in case, he did not cite aforesaid witnesses as prosecution witnesses. Section 311 Cr.P.C., empowers the trial Court to summon and examine or recall and re-examine any witness, if, his evidence appears to it to be essential for the just decision of the case. The learned trial Court has not exercised its discretionary powers under Section 311 Cr.P.C. in a right perspective. It ought to have allowed the application of the petitioner to impart justice and effective adjudication of the case.

5. On the other hand, learned counsel for respondents No. 1 to 5 submits that one of the doctors, namely; Dr. Vivek, who had initially treated the petitioner has already been examined as PW-2. The petitioner was in a

great slumber for about 4 years and moved instant application under Section 311 Cr.P.C., after obtaining 22 effective opportunities for evidence adverse to the interest of respondents No. 1 to 5, who have a fundamental right of speedy trial.

6. Having considered the rival submission of both the sides, this Court finds the instant petition completely devoid of any merit for the reasons that Dr. Vivek, who initially treated the petitioner, has been examined by the prosecution as PW-2. Respondents No. 1 to 5 have been booked under Section 325 IPC along with other offence, on the basis of medico-legal report prepared by the aforesaid doctor. Subsequent medical treatment of the petitioner at Maharaja Agrasen Medical College and Hospital, Agroha, District Hisar and PGIMER, Chandigarh, is not going to improve case of the prosecution, inasmuch, as the petitioner does not want any enhancement in punishment of respondents No. 1 to 5, by adding some section graver than Section 325 IPC. Petitioner wants to lead only corroborating evidence, which relates to insignificant aspect of the case, in view of the fact that he himself narrated the injuries and the manner in which the same caused to him by respondents No. 1 to 5. On the basis thereof and coupled with medical evidence, respondents No. 1 to 5 are facing trial with appropriate sections of Indian Penal Code.

7. Learned counsel for the petitioner has not been able to justify the examination of aforesaid doctors, more particularly, when they have not declared any injury of the petitioner allegedly caused by respondents No. 1 to 5 much graver than declared by PW-2 Dr. Vivek. Therefore, case of the prosecution is not going to improve in any manner, after examination of both the aforesaid doctors.

8. That apart, respondents No. 1 to 5 are facing protracted trial for the last around six years. The prosecution took around four years in concluding its evidence. Allowing the application of the petitioner under Section 311 Cr.P.C., at this stage, would definitely prejudice the rights of respondents No. 1 to 5, more particularly when the evidence sought to be brought on record by the petitioner is not going to improve the prosecution case. It seems that the petitioner just to delay the trial has moved the present application under Section 311 Cr.P.C. The learned trial Court has rightly dismissed the same giving sound reasoning in the impugned order Annexure P-4 that under Section 311 Cr.P.C., it is not obligatory on the part of the Court to summon any witness, if, his evidence is not essential for just decision of the case.

9. The facts of the judgments (supra) relied upon by learned counsel for the petitioner are not identical to the facts of instant case. Each individual case has its own facts and circumstances and has to be decided independently considering the peculiar facts of the same which cannot be identical in any situation. No strait-jacket formula can be applied for universal application. Therefore, no benefit, whatsoever of the judgments (supra) relied upon by learned counsel for the petitioner can be given.

10. Dismissed.

July 31, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No