

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

**CRM-M-45600-2018
Date of decision: 15.10.2018**

Jarnail Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Amit Arora, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 08.10.2018 (Annexure P-4), passed by the Principal Magistrate, Juvenile Justice Board, Tarn Taran, dismissing the application of the petitioner filed under Section 311 Cr.P.C.

Brief facts of the case are that the petitioner is the complainant in FIR No. 76 dated 17.08.2008, under Sections 323, 325, 324, 323, 148 and 149 of the IPC (Section 307 IPC added later on), registered at Police Station Valtoha, District Tarn Taran, in which the allegations are that on 08.08.2008, petitioner/complainant was working in his field and the accused persons along with co-accused reached there and caused him injuries on account of showing favour to one Lakhbir Singh in the *panchayat* elections.

It is worth noticing here that the aforesaid FIR pertains to the year 2008 and one of the prosecution witness Dr. Paramjit Singh, Medical Officer, summoned by the trial Court, could not be examined as he has travelled abroad. Thereafter, the prosecution moved an application to examine a Radiologist in place of aforesaid witness Dr. Paramjit Singh to prove the X-Ray report/film of

the petitioner and the accused persons gave no objection to the same. Thereafter, trial Court allowed the said application and recorded the statement of Bikramjit Singh, Radiographer as PW-5 who proved the X-Ray report/film, which was prepared by Dr. Paramjit Singh after examining the petitioner. In this manner, the prosecution has virtually substituted Dr. Paramjit Singh with Bikramjit Singh, Radiographer as PW-5.

It is also worth noticing here that being an old case, evidence of the prosecution was closed by Court order dated 24.09.2018 as the prosecution could not procure the presence of Dr. Paramjit Singh and instead recorded the statement of Bikramjit Singh, Radiographer.

Thereafter, the petitioner filed an application under Section 311 Cr.P.C. with the prayer that aforesaid Dr. Paramjit Singh be summoned and examined as a prosecution witness.

A perusal of the aforesaid application (Annexure P-2) shows that it is nowhere mentioned that Dr. Paramjit Singh has returned from abroad and why has the prosecution substituted this witness?

The accused persons contested the said application by filing a reply that sufficient opportunity has been granted to the prosecution to examine the witnesses. Thereafter, the trial Court, vide impugned order dated 08.10.2018 (Annexure P-4), dismissed the application holding that once the public prosecutor has moved an application to substitute Dr. Paramjit Singh with Bikramjit Singh, Radiographer, on which the accused persons gave no objection, and while appearing as PW-5 the said witness has proved X-Ray report/film, therefore, no justification is found to allow the application filed by the petitioner/complainant.

Learned counsel for the petitioner has argued that the recording of

the statement of Dr. Paramjit Singh is relevant for proving the injuries sustained by the petitioner and, therefore, the trial Court has wrongly dismissed the application filed by the petitioner under Section 311 Cr.P.C.

After hearing learned counsel for the petitioner, I find no merit in the present petition for the following reasons:

- (a) The prosecution itself has substituted Dr. Paramjit Singh with PW-5 Bikramjit Singh, Radiographer, who has already proved the X-Ray report/film;
- (b) The reason for substitution, given by the public prosecutor, was that Dr. Paramjit Singh has travelled abroad and in the application, filed by the petitioner under Section 311 Cr.P.C., it is nowhere mentioned that Dr. Paramjit Singh has returned back;
- (c) The FIR in question pertains to the year 2008 and the prosecution evidence was closed by the Court order dated 24.09.2018 and the said order has neither been attached with the present petition nor the same has been challenged, therefore, the said order has attained finality.
- (d) Even otherwise, learned counsel for the petitioner has fairly stated that the case is now fixed for final argument before the trial Court and I find no ground to allow the said application as the FIR pertains to the year 2008 and also in view of the fact that X-Ray report/film has already been proved by PW-5 Bikramjit Singh, Radiographer. Moreover, a perusal of the application shows that ingredients of Section 311 Cr.P.C. are not made out.

In view of the above discussion, the present petition is hereby dismissed.

October 15, 2018

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*