

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

**Crl. Rev. No. 4608 of 2017 (O&M)
Date of decision : 29.10.2018**

Neelam Manhas

..... Petitioner

versus

Rashpal Singh and others

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Munish Puri, Advocate
for the petitioner.

Mr. R.D. Sharma, Advocate
for the respondents.

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ANITA CHAUDHRY, J.

The petitioner has assailed the order dated 08.08.2017 vide which the application moved by him under Section 311 Cr.P.C. had been dismissed.

A complaint was filed by Neelam in March 2013. Preliminary evidence was recorded. The complainant produced her witnesses on her own. The accused were summoned under Sections 323, 452, 341, 148, 149, 506 IPC. The trial Magistrate posted the case for pre-charge evidence in August 2014. The case was adjourned at least 23 times and last opportunity was granted in September 2016. The zimni orders further show that summons were being issued to the doctors and they were served and bailable warrants were issued but each time the warrants

were received back unserved. One of the doctors appeared but his statement could not be recorded as the record was not produced. He was bound down for number of dates. In January 2017 it was disclosed that the original bed head ticket and admission card could not be traced in the hospital. The case was again adjourned a number of times. Meanwhile, the warrants which were being issued for the other two doctors were returned with the report that they had been transferred. The complainant failed to give the new address. In May 2017 the application filed by the complainant for leading secondary evidence was allowed and the case was again posted for pre-charge evidence and on each date the Court was giving last opportunity and making it clear that in case the evidence was not produced, the evidence would be deemed to be closed. In July 2017 the counsel for the complainant made a statement giving an undertaking that in case they failed to produce their evidence, their evidence may be deemed to be closed. On the adjourned date, no evidence was produced and the evidence was closed by Court order. Thereafter, the complainant filed an application under Section 311 Cr.P.C. for examining the three doctors. The explanation given by the complainant was that since the complainant was pregnant, she could not examine the witnesses and she may be allowed to examine them. The trial Court after hearing both the sides dismissed the application on 08.08.2017. Subsequently, charge was framed. The case was again posted for after charge evidence.

The submission on behalf of the petitioner is that the evidence of the complainant was closed in a haste and the complainant was pregnant and she was suffering from some problems and was under

treatment and she gave birth to a child in November 2017 and therefore, delay also took place in filing the revision. The counsel submits that the order passed on the application under Section 311 Cr.P.C. is a interlocutory order, therefore, they have filed the petition in the High Court. Reliance was placed upon *Amar Nath etc. Vs. State of Haryana etc.* 1977 PLR 695, *M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim & Apparels Ltd.* 2001(4) RCR (Criminal) 137, *Baljit and other Vs. State of Haryana and another* 2009(2) RCR (Criminal) 178 and *Babu Lal Jain Vs. State of Haryana* 1997(4) RCR (Criminal) 323.

On the other hand, the submission of the respondent is that the Court had adjourned the case giving more than 40 adjournments to enable the complainant to complete the evidence and the Court has to strike a balance between the rights of both the parties and the trial cannot go on without a limit on time.

The evidence of the complainant had been closed after the Court had afforded more than 40 adjournments. It is necessary to notice that it was a complaint case. The complainant had not given the name of the Doctor in the list of witnesses. However, at the preliminary stage they produced medical officers of her own and their statements were recorded. Even at that time the Court was adjourning the case every fortnight, therefore, the submission that short dates were being given by the Court later has to be rejected.

A perusal of the record shows that one of the doctors was served and he appeared in the Court but the record was not available and he was sent back. Thereafter an application for secondary evidence was

moved which was allowed. Bailable warrants were issued to secure the presence of other witnesses and report had been received that they had been posted out. The report had come some time in December 2016 but no attempt was made by the petitioner to give the correct address. The Court had accommodated the complainant and had adjourned the case for almost 40 dates. It was the complainant who was at fault. The argument that the complainant had conceived and there were complications in her pregnancy is not a valid ground as the record shows that even in her absence, her lawyer had been appearing and taking steps. The evidence of the prosecution had been closed by Court order. That order was not challenged. The petitioner filed an application under Section 311 Cr.P.C. seeking to summon the doctors which was dismissed. The Court noted the facts and has rightly rejected the application. I find no infirmity in the same.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

29.10.2018

'Sunil'

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No