

CRM-M-10538 of 2014

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

CRM-M-10538 of 2014
Date of Decision: 13.02.2019

Mithu Lal

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Ms. Isha Goyal, Advocate, for the petitioner.
Mr. Amandeep S. Gill, DAG, Punjab.
Ms. Sonia Rani, Advocate,
for Mr. Rajbir Singh, Advocate, for respondents No.2 to 7.

RAMENDRA JAIN, J. (ORAL)

Complainant through instant petition under Section 482 Cr.P.C. has assailed order dated 03.03.2014 (Annexure P-13) of the Revisional Court, whereby order of the trial Court dated 20.12.2013 was set aside.

Briefly, complainant lodged FIR No.145 dated 30.08.2009 at Police Station Dirba, District Sangrur, against respondents No.2 to 7 under Sections 452, 323, 506, 148 and 149 IPC. Section 307 IPC was added later on. During investigation, police did not find any injury upon the person of complainant as "dangerous to life". Therefore, it, by deleting Section 307 IPC, filed final report under Section 173(2) Cr.P.C. under Sections 452, 323, 506, 148 and 149 IPC. Private respondents were charge-sheeted as such vide order dated 13.09.2010. Thereafter,

complainant moved application under Section 311 Cr.P.C. for recalling of

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the witnesses and obtaining medical opinion to justify his allegations against private respondents under Section 307 IPC as he had received two stick blows on his head, which, after hearing both the sides, was accepted by the trial Court vide order dated 20.12.2013, to which private respondents laid challenge before the Revisional Court, who set aside the aforesaid order of the trial Court.

Learned counsel for the petitioner *inter alia* contends that order dated 20.12.2013 of the trial Court was interlocutory order. Therefore, the Revisional Court had no jurisdiction to interfere with the same. In support of her contention, learned counsel placed reliance on the judgment of Hon'ble Supreme Court in ***Sethuraman v. Rajamanickam***, 2010(5) R.C.R.(Criminal) 512.

On the other hand, learned counsel for private respondents contends that impugned order of the Revisional Court is perfectly legal, because the trial Court had passed its order in a casual manner. Trial Court did not apply its mind that the police before filing final report under Section 173(2) Cr.P.C. had already obtained medical opinion, whereby both the injuries suffered by the complainant on his head were found simple in nature, not falling under Section 307 IPC. Therefore, no further medical opinion was required to be sought.

Having given thoughtful consideration to the rival submissions, this Court finds the instant petition completely devoid of any merit for the reasons to follow.

Trial Court ordered for constitution of a medical board for second opinion regarding nature of injuries inflicted by private respondents to the complainant, which is virtually a final order. Thus, the

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same could be assailed before the Revisional Court inasmuch as it is well settled proposition of law that Revisional Court can exercise its jurisdiction when (i) the Courts below have acted beyond jurisdiction vested in them; (ii) have not exercised the same diligently and (iii) have exercised illegally.

For ready reference, Section 311 Cr.P.C. is reproduced hereunder.

“Power to summon material witnesses, or examine person present. - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Facts and circumstances of the judgment in ***Sethuraman*** (supra) are completely distinguishable from the facts of present case inasmuch as in that case, the Madras High Court had allowed revision of the petitioner-complainant without affording opportunity of hearing to the private respondents, whereas in the instant case, Revisional Court had passed the impugned order after hearing both the sides. That apart in that case, applications of the respondent-accused under Sections 91 and 311 Cr.P.C. were rejected by the trial Court, whereby while denying his signature on the cheque in question he had sought to produce bank pass book, income tax accounts and LDS deposit receipts of the complainant and his calling for cross-examination. Those documents sought to be

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produced were personal documents of the complainant. Therefore, it was necessarily required to hear him before issuance of any direction to him to re-appear for his cross-examination and production of documents, whereas in the instant case, trial Court illegally sought second medical opinion, which the police during investigation had already sought and deleted Section 307 IPC. As the facts and circumstances of the authority cited by learned counsel for the petitioner are distinguishable from the facts of the present case, no benefit of the same can be given to the petitioner.

In the instant case, Revisional Court, after hearing both the sides had set aside the order of the trial Court. Same is perfectly legal inasmuch as petitioner in his defence can produce medical report favouring him, for which he unnecessarily sought indulgence of the Court. More-so, in case of production of subsequent medical opinion by the petitioner-complainant in his defence to rebut the prosecution case, the trial Court in its wisdom could amend or alter the charge at any stage of the proceedings.

In view of discussion made above, instant petition is dismissed.

February 13, 2019
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No