

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-32188-2017

Date of Decision:15.05.2019

Suresh Kumar

...Petitioner

Versus

State of Haryana and another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vijay Singh, Advocate for the petitioner.
Mr.Sanjay Kumar Saini, AAG, Haryana
Mr.R.N.Lohan, Advocate for respondents No.2 to 4.

ANIL KSHETARPAL, J.

By way of this petition under Section 482 of the Code of Criminal Procedure, 1973, the complainant has challenged the order dated 01.03.2016 passed by the learned Judicial Magistrate 1st Class, Safidon as also the order passed by the learned Additional Sessions Judge dated 18.07.2017, whereby the revision petition has been dismissed against the order dated 01.03.2016 being not maintainable.

Some facts are required to be noticed. On the complaint of petitioner, FIR No.169 dated 03.10.2012 under Sections 148, 149, 323, 324 and 506 of the Indian Penal Code was registered at Police Station Pillukhera against five persons including the private respondents for inflicting injuries to the present petitioner and two others. After completion of the investigation, challan was filed. Charges were framed and trial is pending before the court of Judicial Magistrate 1st Class, Safidon.

Petitioner pleads that he received injuries and he was taken to local hospital from where he was referred to Post Graduate Institute of

Medical Sciences, Rohtak, where medico-legal report was prepared by Dr.Mahesh and x-ray report was required to be proved. For that purpose, it was necessary to examine Dr.Mahesh and Dr.Vinay Mahir. However, the learned trial court dismissed the application under Section 311 of the Code of Criminal Procedure on the ground that granting opportunity to prosecution for leading evidence would amount to review of order which is not permissible.

It may be noted that petitioner has annexed three zimni orders passed by the learned trial court. First order is dated 11.12.2015 when after noticing that no prosecution witness is present, the court adjourned the case for further cross-examination of the prosecution witness No.4 and for remaining evidence of the prosecution. Thereafter, on 05.01.2016, the court noticed that summons issued to prosecution witnesses namely Dr. Rahul and Constable Mandeep Singh have been received back duly served but these witnesses are not present. The court ordered issuance ofailable warrants for Dr.Rahul and Naresh, whereas non-ailable warrants were issued for Constable Mandeep Singh. However, on the next date of hearing without recording as to what had happened to the aailable or non-ailable warrants after examining four prosecution witnesses, the prosecution evidence was ordered to be closed.

As noticed above, complainant filed an application under Section 311 of the Code of Criminal Procedure to permit examination of Dr.Mahesh from PGIMS Rohtak for proving medico-legal report and Dr.Vinay Mahir for examining x-ray of the injured.

Learned trial court dismissed the application as noticed above on the ground that allowing of such application would amount to review of

order closing the evidence.

This Court has heard the learned counsel for the parties at length and with their able assistance gone through the documents filed.

Section 311 of the Code of Criminal Procedure enables the Court to 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 at any stage of any enquiry, trial or other proceedings under the Code of Criminal Procedure if evidence appears to be essential to the just decision of the case. The emphasis of the Legislature is with respect to just decision of the case. The effort of the courts must be to administer substantive justice rather than scuttle the justice on the technicalities. The object for making provision under Section 311 of the Code of Criminal Procedure is to do substantive justice between the parties. For this purpose, the Courts have been empowered to summon any person as a witness or recall or re-examine any person already examined at any stage.

Learned counsel for the respondents-accused has submitted that if the application is allowed, it would amount to review of the order closing the evidence and, therefore, not permissible. He has relied upon a judgment passed in the case of ***Hari Singh Vs. State of Haryana 2002 (2) RCR (Crl.) 316.***

In the considered view of this Court, order of Court to summon any witness after closing of the evidence under Section 319 of the Code of Criminal Procedure cannot be treated as a review of order closing the evidence. In fact, in common language power under Section 311 of the Code of Criminal Procedure is known as a power to lead additional

evidence. Additional evidence, as is the name, is after the evidence has already been closed. Still further, language of Section 311 of the Code of Criminal Procedure clearly provides that any court may act at any stage of any enquiry, trial or other proceedings, is entitled to summon any person as a witness or examine any person in attendance or recall or re-examine any person already examined. Thus, it is obvious that wide powers have been given to the Court to examine the witnesses and even recall witness who has already been examined if his evidence appears to be essential to the just decision of the case. If such power is treated as a review, it would result in defeating the object and intend behind Section 311 of the Code of Criminal Procedure.

Now let us examine the judgment relied upon by the learned counsel for the respondent in the case of **Hari Singh** (supra).

In the aforesaid case, the prosecution did not produce a single witness from the date of presentation of the challan till the evidence was closed by the order after a period of seven years. Still further, in the aforesaid case, application under Section 311 of the Code of Criminal Procedure was neither moved by the prosecution through public prosecutor nor by the complainant. Rather it was moved by some one who had no locus standi. The Court further examined that the accused have already faced protracted trial for a period of seven years by attending each and every adjourned date. Thus, the Court found that any further delay would, instead of serving the cause of justice as provided under Section 311 of the Code of Criminal Procedure, result in miscarriage of justice by denying a speedy trial to the accused. Of course, in para 10 of the judgment, it was also observed that it would in a way amount to review. However, such

observations made in para 10 cannot be treated as a *ratio decidendi*. The judgment relied upon is a decision of the Court on fact and situation of the aforesaid case.

In the present case as noticed above, the complainant had moved an application to examine two doctors to prove medico-legal report and x-ray report. Such evidence would advance the cause of justice and it is essential to the just decision of the case. It does not amount to review of the order closing the evidence.

Accordingly, the order dated 01.03.2016 under challenge passed by the learned Judicial Magistrate 1st Class is set aside and the application under Section 311 of the Code of Criminal Procedure shall stand allowed. Learned trial court would make a sincere endeavour to expeditiously conclude the trial of the case within a period of six months.

In view of the above, the present petition is allowed.

15.05.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No