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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-40281-2016 [O&M]

Date of Decision : September 26, 2019

Mahender Singh

.... Petitioner

Versus

State of Haryana

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. R.K.Arya, Advocate,
for the petitioner.

Mr. Ashish Sanghi, DAG, Haryana.

Mr. Pawan Singh, Advocate,
for the complainant.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 9.10.2016 (Annexure P/3) passed by learned Additional Sessions Judge, Sonapat, whereby application of the petitioner under Section 311 Cr.P.C. for summoning of medical evidence and concerned doctor was dismissed.

2. Learned counsel for the petitioner contended that the occurrence had taken place and both the parties had got recorded their version and cross-version vide FIR No. 232 dated 21.06.2012 under Sections 323, 506 and 34 IPC and subsequently, Sections 307 and 326 IPC were added on the basis of investigation and medical evidence. Petitioner, Mahender Singh had sustained number of injuries at the hands

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of the accused persons. The petitioner had moved application for summoning of documents to produce medical evidence in order to prove the nature of injuries. The other injured, Krishan had suffered spinal fracture at the hands of the complainant party, but under the influence of accused party, neither the prosecution collected the evidence regarding the grievous nature of injury suffered by the injured (Krishan) nor the medical authority of BPS, Khanpur supplied the report to the investigating agency.

3. Learned counsel for the petitioner also contended that petitioner was initially admitted at Civil Hospital, BPS Khanpur and then he was referred to AIIMS, Delhi where he remained under treatment from 18.06.2012 to 19.07.2012 as an outdoor patient and from 12.01.2013 to 20.1.2013 as indoor patient. To lead that evidence, the petitioner moved application under Section 311 Cr.P.C., but that application was dismissed by learned Additional Sessions Judge vide order dated 19.10.2016 (Annexure P/3).

4. Learned State counsel as well as learned counsel representing the complainant contended that learned trial Judge has rightly considered all the aspects and dismissed the application. As no document was produced showing treatment from AIIMS New Delhi, application under Section 311 Cr.P.C. was dismissed.

5. Learned counsel for the petitioner has placed on file copy of complete medical record as Annexure P/4 showing petitioner's treatment as AIIMS, New Delhi and the following medical opinion was given by the doctor concerned:-

“- Multiple Rt orbital and facial fractures, as described, with herniation of Rt. Orbital fat in Maxillary sinus through blow out fracture and with Bulky thickened Rt inferior oblique Muscle.

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- Rt Maxillary Hemosinus and Rt orbital extra canal henetoma in lateral and inferior quadrant.
- B/L optic Nerve complex and Globe appears Normal (No evidence of foreign body)."

6. Leading of such an evidence was most important for the just decision of the case, but learned trial Judge has dismissed the application under Section 311 Cr.P.C. In the given circumstances, the complainant was more or less helpful, because it was for the investigating agency to collect the medical evidence from AIIMS, New Delhi and BPS Khanpur, but the Investigating Agency failed to do so. The trial of such a case, especially under Sections 307 and 326 IPC, should not be allowed to be held-up or jeopardized.

7. In the light of the above, the present petition stands allowed and the order dated 9.10.2016 (Annexure P/3) passed by learned Additional Sessions Judge, Sonapat, is set-aside. Learned trial Judge is directed to summon the treating doctor of AIIMS, New Delhi along with record of injured in this case and to examine him as prosecution witness.

(SHEKHER DHAWAN)
JUDGE

September 26, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes