

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

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CRM-M-49982-2019
Date of decision: 27.02.2020

Balkar Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Shehbaz Thind, Advocate for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "hereinafter referred to as "the Cr.P.C.") for quashing of order dated 05.10.2019 passed by learned Judicial Magistrate 1st Class, Ludhiana in case CHI No.38485 of 2013 titled as 'State Vs. Ajit Singh' arising out of FIR No.387 dated 22.11.2008 registered under Sections 427, 447, 380, 148 and 149 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") at Police Station Basti Jodhewal, District Ludhiana whereby application filed by the prosecution under Section 311 of the Cr.P.C. for summoning Dr. Rakesh Kumar Aggarwal of Christian Medical College, Ludhiana for proving medico legal reports of Raj Rani was dismissed.

The above said FIR was registered on statement of petitioner-Balkar Singh. In his statement, Balkar Singh alleged that on 22.11.2008 at about 11:30 P.M. his uncle Ajit Singh (Chacha), his uncle (Fufad) and his two sons and son-in-law along with some other persons came to his house and threw his household articles out of the

house and tried to take possession thereof. Some of his household articles were taken away by some of the above said persons in Tata-407 and some of the goods were damaged. He came to know that his uncle had got his house recorded in his name. Pursuant to registration of FIR, the police investigated the case and charge-sheeted accused Ajit Singh, Harbhajan Singh, Mohan Singh, Ujjal Singh, Bhupinder Singh and Mohan Singh under Sections 427, 447, 380, 148 and 149 of the IPC. While the case was fixed for prosecution evidence, petitioner-Balkar Singh through Assistant Public Prosecutor filed application under Section 311 of the Cr.P.C. which was opposed by respondents No.2 to 7. The above said application was dismissed vide order dated 05.10.2019.

Feeling aggrieved, petitioner-Balkar Singh has filed the present petition.

In the course of hearing, learned counsel for the petitioner has argued that the examination of Dr. Rakesh Kumar Aggarwal of Christian Medical College, Ludhiana is essential for just decision of the case and grave miscarriage of justice will be caused by the impugned order dismissing the application for his examination. However, in the course of arguments, learned counsel for the petitioner has submitted that during pendency of the petition, learned Judicial Magistrate 1st Class, Ludhiana has altered charges framed against respondents No.2 to 7 and also framed charge under Section 323 read with Section 149 of the IPC on 15.01.2020 in terms of order dated 09.01.2020. Learned counsel for the petitioner has accordingly prayed for quashing of impugned order.

In view of the nature of relief involved, issuance of notice to the respondents is considered to be unnecessary.

In the present case application filed under Section 311 of the Cr.P.C. for allowing examination of Dr. Rakesh Kumar Aggarwal was dismissed on the ground that in the FIR and in statements of Davinder Kaur and Raj Rani there were no allegations of causing of injuries to Davinder Kaur and Raj Rani by the accused. However, now learned Judicial Magistrate 1st Class, Ludhiana has altered charges and also framed charge under Section 323 read with Section 149 of the IPC on 15.01.2020 in terms of order dated 09.01.2020. On such alteration/addition of charge, learned Judicial Magistrate 1st Class, Ludhiana has to conduct further proceedings in accordance with Section 217 of the Cr.P.C. which reads as under:-

"217. Recall of witnesses when charge altered -

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material." (Emphasis supplied)

In view of the alteration of charge, learned Judicial Magistrate 1st Class, Ludhiana has to recall the witnesses already examined and to call any further witness to whom the Court may think

to be material.

In view of the facts and circumstances of the case, Dr. Rakesh Kumar Aggarwal of Christian Medical College, Ludhiana will be a material witness whose examination will be necessary for just decision of the case. In these facts and circumstances and in view of the course of action to be followed by learned Judicial Magistrate 1st Class, Ludhiana, the present petition has become infructuous as the petitioner will be entitled to make a prayer before the Court for examination of Dr. Rakesh Kumar Aggarwal and in case his prayer is not acceded to by learned Judicial Magistrate 1st Class, Ludhiana, the petitioner shall be entitled to avail appropriate remedies in accordance with law.

In view of the above, the petition is disposed of as having become infructuous.

27.02.2020

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(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No