

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

**CWP-20162-2021
Date of Decision: 26.10.2021**

Pardeep @ Dholia

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO

Present: - Mr.Chanderhas Yadav, Advocate, for the petitioner.

M.S. RAMACHANDRA RAO, J.

In this Writ Petition, the petitioner, who is an accused in FIR No.214 dt. 25.07.2021 for allegedly committing offences under Sections 307, 323, 325, 341, 506 read with Section 34 IPC, on the file of the Police Station Salhawas, is challenging an order dt. 22.09.2021 passed by the Chief Medical Officer, Civil Hospital, Rewari (respondent No.4) whereunder the petitioner's claim for conducting a re-medical or providing opinion of Board of Doctors regarding injuries received by respondent No.5, was declined.

The back ground facts

Petitioner was allegedly involved in a road traffic accident wherein injuries were suffered by respondent No.5, but petitioner alleges that the said incident is being converted by the police into an attack

attracting offence mentioned in Section 307 IPC by respondent No.5 in connivance with some Doctors of a private hospital.

The alleged incident admittedly occurred on 18.7.2021 at about 9:00 p.m. near Village Gorla, District Jhajjar and respondent No.5 was admitted in Virat Hospital Super Specialty and Multispecialty Hospital, Rewari at 12:30 a.m. on 19.07.2021. It is alleged by petitioner that he underwent treatment there for three days, that he was discharged from there in 22.7.2021, and that a day after his discharge i.e. on 23.7.2021, respondent No.5 again visited the same hospital and got prepared a Medico Legal Report [for short 'MLR'] on the said date introducing certain new facts therein about a new injury No.7 alleged to be a "stab wound over abdomen (L) side".

Petitioner alleges that respondent No.5 then approached the police on 25.7.2021 and prepared a false story to implicate the petitioner stating that these injuries were given by the petitioner and one of his colleagues.

It is thereafter that the FIR No.214 dt. 25.07.2021 was registered against the petitioner accusing him of the above offences including the offence under Sec.307 IPC.

According to the petitioner, the investigating agency moved an application before the doctor at Virat Hospital regarding the opinion on injuries and he expressed an opinion on 31.07.2021 that the injury No.7 was a grievous sharp injury and dangerous to life, and on that basis in the FIR Section 307 was added.

Petitioner alleges that because of this he was arrested on 01.08.2021 and was produced before the Court of JMIC, Jhajjar on 02.08.2021.

The order dt.20.8.2021 of the Magistrate

On 02.08.2021, petitioner moved to the said Court by way of an application for constitution of a medical board at a Government Hospital to re-examine the complainant and the injuries allegedly suffered by him in the accident.

On 20.08.2021 the said application was dismissed by the said Court opining that the allegation of the petitioner that the complainant got the MLR prepared in connivance with the doctor of private hospital cannot be sustained, since the incident was of 18.07.2021, and the application for direction to CMO, Jhajjar for constitution of medical board for re-medical of the complainant was moved by the accused on 02.08.2021 almost 15 days after the alleged incident. The JMIC, Jhajjar opined that the injuries have become old by then, and no useful purpose will be served by constituting the said medical board for conducting re-medical of the complainant.

The order dt.17.9.2021 of the Addl.Sessions Judge, Jhajjar in Revision

Petitioner challenged the said order dt. 20.08.2021 passed by JMIC, Jhajjar by way of a Revision petition under Section 397 Cr.P.C.

The said Revision was numbered as CRR-27-2021 by the Addl. Sessions Judge, Jhajjar.

Vide an order dt. 17.09.2021, the learned Addl. Sessions Judge, Jhajjar dismissed the said Revision taking a view that at the stage of

investigation, the Magistrate cannot direct constitution of the Medical Board for conducting of re-medical examination of the complainant, since it is a settled law that no material in defence sought to be produced on behalf of an accused, can be considered by the trial Court at the stage of investigation or at the time of framing of charge upon the accused.

He further held that under Section 91 of Cr.P.C., the accused had no right to produce any material even at the stage of framing of a charge and the legal principle was that the defence of the accused cannot be looked into at the stage when the accused sought to be discharged as well. He quoted the decisions of the Supreme Court in *State of Orissa Vs. Debendra Nath Padhi*¹ and also *M.L. Shivalingamurthy Vs. Central Bureau of Investigation, Bengaluru*².

He noted that the challan/chargesheet had not been submitted till then before the Magistrate and held that under Criminal Law, documents of the accused cannot be considered in his defence at the stage of investigation unless there are special reasons to be recorded by the concerned Court. He also agreed with the reasoning of the trial Court that because of lapse of time it would be fruitless to direct the conduct of a re-medical of the complainant.

Other relevant events

I may point out that *after* the JMIC, Jhajjar had passed order on 20.8.2021 rejecting the petitioner's request for constitution of Medical Board for re-medical of respondent No.5, and *before* the petitioner availed the remedy of Revision against the said order before the Addl. Sessions

¹ 2005 (1) RCR (Criminal) 297

² 2020(1) RCR (Cri) 596

Judge, Jhajjar in CRR-27-2021, an application, through the brother-in-law of the petitioner by name Sumer Singh, was got filed by the petitioner before respondent No.2 for conduct of such re-medical of respondent No.5 by constituting a Board of Doctors for taking opinion on the injuries of respondent No.5.

On this application endorsement was made on 03.09.2021 by respondent No.2 to conduct enquiry in accordance with the rules and submit an enquiry report to his office.

Thereupon the Civil Surgeon, Jhajjar had addressed the Civil Surgeon, Rewari on 09.09.2021 informing the latter that private hospital Virat Hospital, Rewari was outside the jurisdiction of the District Jhajjar and so he was forwarding the application of the brother-in-law of the petitioner for conduct of enquiry and for sending an enquiry report to respondent No.2.

Thereafter, the impugned letter dt. 22.09.2021 was issued by the Chief Medical Officer, Civil Hospital, Rewari (respondent No.4) to the Civil Surgeon, Rewari stating that to conduct such re-medical examination, an order/application is required to be submitted by the investigating officer of police or Judicial Magistrate in writing to the Civil Hospital, Rewari and re-medical cannot be done in the absence of any order/application either from police investigating officer or Judicial Magistrate.

This is challenged in this Writ Petition. Apart from quashing the letter dt. 22.9.2021 of respondent No.4 in CRR-27-2021, petitioner had also sought a writ of mandamus directing him to comply with the order dt.

26.08.2021 passed by the Deputy Commissioner, Jhajjar (respondent No.2) whereunder a direction was given to CMO Jhajjar to conduct an enquiry.

The contentions of Counsel for petitioner

Counsel for the petitioner contended that view of respondent No.4 cannot be sustained and it is illegal and arbitrary.

He contended that if the private hospital had discharged the patient, who had sustained injuries, within three days, it indicates that the injuries were not serious or grievous and it was clear that MLR was got prepared subsequently by adding injury No.7 which had not been mentioned in the discharge summary. According to him, during the proceedings before the Judicial Magistrate, respondent No.5 as well as the investigating officer had stated that they had no objection if re-medical examination was conducted by the doctors of the Government hospital and under the Medico Legal Manual, 2012, Regulation No.46 permitted such re-examination in the case of medico-legal case. Reliance is also placed on Section 36 of the Cr.P.C. and also Rule 1.15 of the Punjab Police Rules, 1934, Volume-I, Chapter-I, to contend that it was the duty of the Deputy Commissioner/District Magistrate, Jhajjar (respondent No.2) to keep a check on criminal administration and to know the truth. Reliance is also placed on a decision of the Allahabad High Court in ***Radha Krishna Vs. State of UP*** (Order dt. 06.05.2013 in CWP-6319-2013) to contend that a re-medical examination of the party in a criminal case may not be said to be interference in the investigation of the criminal case; and fair

investigation and fair trial require that in certain circumstances such a re-medical examination ought to be done.

The consideration by the Court

I have considered the contentions of the counsel for the petitioner.

Admittedly, the incident in question occurred on 18.7.2021 in which respondent No.5 got injured. According to the FIR, the accused was allegedly carrying a sharp iron thing in his hands and he allegedly gave blows on the throat, hands and chest of respondent No.5, and respondent No.5 then became unconscious.

The Medico Legal Report (MLR) clearly mentioned that injury No.7 was a stab wound over abdomen (L) side and in the opinion of the doctor, the injury was a grievous sharp injury and dangerous to life.

The petitioner no doubt disputes this and alleges that injury No.7 was subsequently added as an afterthought three days after the discharge of accused.

Be that as it may, the fact remains that the incident in question having occurred on 18.7.2021 by this date, more than three months have lapsed. Even assuming that there is any substance in the petitioner's contention, such re-medical at this point of time would serve no purpose since the injury, if any, would have healed by now making it difficult at this point of time to express any opinion about it by any doctor.

Even the initial application moved before the JMIC, Jhajjar was 15 days after the alleged incident and the JMIC, Jhajjar had rightly

held that even by then, re-medical of the complainant/respondent No.5, would serve no purpose.

In *State of Orissa (1 Supra)*, Supreme Court has held that at the time of framing of charge or taking cognizance, the accused has no right to produce any material in support of his defence; that at the stage of framing of charge, roving and fishing inquiry is impermissible; and the only right the accused has at that stage is of being heard and nothing beyond that. It was also reiterated that at the stage of framing of charge there can only be limited evaluation of material available on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, and such materials and documents would only be those produced by the prosecution and not the accused.

The Supreme Court in the said decision also referred to Section 91 of the Cr.P.C., which stated as under:-

“Sec.91 : Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

It further held:-

“25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is 'necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings

under the Code'. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the Court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. In so far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it whether police or accused. If under Section 227 what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

26. X xxxx

27. In so far as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at

the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. *We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”*

Thus, it is to be noticed that if any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 Cr.P.C. at the initial stage of the framing of charge would not arise since defence of the accused is not relevant at that stage. However, under the said provision, a police officer may move the Court for summoning and production of document as may be necessary at any of the stages i.e. investigation of the enquiry, trial or other proceedings, mentioned in the said Section.

Insofar as the accused is concerned, his entitlement to seek order under Section 91 Cr.P.C. ordinarily would not come till the stage of defence. Section 91 Cr.P.C. does not confer any right on the accused to produce document in his possession to prove his defence at the initial stage.

If we keep these principles in mind, it is clear that there is no right conferred on the petitioner under the Cr.P.C. to compel respondents No.1 to 4 to conduct re-medical on respondent No.5 because even a charge

has not been framed, and the matter is still at the stage of investigation.
Therefore, I do not deem it appropriate to grant any relief in the Writ
Petition.

Writ Petition is accordingly dismissed.

(M.S. RAMACHANDRA RAO)
JUDGE

26.10.2021

Vivek

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