

118

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

CRM-M-42544-2021

Date of Decision: November 09, 2021

Sandeep

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Manoj Tanwar, Advocate for the petitioner.

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RAJESH BHARDWAJ, J.

Instant petition has been filed under Section 482 Cr.P.C. for setting aside the impugned order dated 10.09.2021, Annexure P-1, passed by the Court of Sub Divisional Judicial Magistrate, Kanina, wherein the application filed by the petitioner-complainant under Section 311 Cr.P.C. for examining Dr.Preeti, X-Ray Department, PGIMS Rohtak, as prosecution witness, has been dismissed.

It has been contended by the counsel for the petitioner that after registration of the FIR, the investigation was completed and the challan was presented. He submitted that the complainant suffered a fracture, which was examined by Dr.Preeti and at the time of filing of challan, Dr.Preeti was cited as a prosecution witness, however, the prosecution had given up her, whereas her examination before the trial Court was expedient in the interest of justice. Therefore, application under Section 311 Cr.P.C. was filed for summoning Dr.Preeti.

It is vehemently argued by learned counsel for the petitioner that the trial Court has declined the application under Section 311 Cr.P.C.

vide impugned order dated 10.09.2021. He submits that as per the law

settled, the application under Section 311 Cr.P.C. can be filed at any stage if it is essential in the interest of justice for adjudication of the case. He submits that the examination of Dr.Preeti is essential for adjudication of the case in the interest of justice and hence, the impugned order deserves to be set aside.

I have heard learned counsel for the petitioner and perused the record made available.

It is apparent from the arguments raised and perusal of the record that after recording of the FIR, the investigation was completed and challan was presented. Dr.Preeti was cited as a witness but she was given up by the prosecution. A perusal of the impugned order would make it crystal clear that though the prosecution had given up Dr.Preeti, however, the case is not adversely affected on merits. The application was opposed by the accused on the ground that the prosecution availed 17-18 opportunities for leading its evidence and now the case was pending for recording of statement of the accused under Section 313 Cr.P.C. The trial Court after hearing both the parties had observed that the prosecution evidence was closed by the APP after giving up two prosecution witnesses, namely, Ct.Dinesh and Dr.Preeti. The medical record concerning Dr.Preeti was about radiologically examination of injured Shyobhai. The document pertaining to the fracture to the injured Shyobhai is Ex.PW9/A and the radiological examination report of the same injured was issued by the General Hospital, Mahendergarh. The record revealed that the document pertaining to the fracture, i.e. Ex.PW9/A was proved by PW9 Dr.Pardeep Yadav and it was because of this reason the another witness of the same medical report, i.e. Dr.Preeti, was given up by learned APP. The application

under Section 311 Cr.P.C. was filed by the complainant and not by the public prosecutor. The trial Court came to the conclusion that the application for the proposed evidence is not necessary for effective adjudication of the case as another witness to prove the same document already stands examined.

As per the law settled, there is no dispute that the provisions of Section 311 Cr.P.C. can be invoked at any stage before pronouncement of the judgment if the Court finds it appropriate that the examination of the proposed witness is necessary for proper adjudication of the case and in the interest of justice. However, the same cannot be invoked to delay the trial or to plug the holes in the case. In the facts and circumstances of the present case, the prosecution has taken a conscious decision for giving up Dr.Preeti as the case of the prosecution was not adversely affected in the absence of Dr.Preeti and evidently PW9 Dr.Pardeep Yadav already stood examined in support of the document pertaining to the said injury. The examination of Dr.Preeti is not necessary for the just adjudication of the case as PW9 Dr.Pardeep Yadav, has already been examined in order to prove the same injury. Reliance can be placed on the judgment passed by Hon'ble Apex Court in **V.N.Patil vs K.Niranjan Kumar and others** (2021) 3 Supreme Court Cases 661 wherein it has been held as under:-

“14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to

be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion”.

In the overall facts and circumstances, the Court finds no infirmity in the conclusion arrived at by the trial Court and hence, the petition being devoid of any merit is, hereby, dismissed.

November 09, 2021
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |