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

CRM-M-13329-2022

Date of decision: 31.03.2022

RAO VIRENDER SINGH

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sunil K. Nehra, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No. 39 of 01.03.2011, registered at Police Station Radaur, District Yamunanagar, wherein offences constituted under Sections 323, 324, 427, 435, 452, 506, 148, 149 of IPC, are embodied.

2. Apparently the FIR (supra), is of the year 2011, and, the trial as became entered thereon by the learned trial Court, has yet not concluded. Obviously, the petitioner becomes aggrieved from the delay in the conclusion of the trial, as arises from the FIR (supra).

3. The controversy which is engaging the contesting litigants rests, upon the delays as purportedly made on the part of the prosecution in not ensuring the earliest termination of the trial, as arises from the FIR (supra).

4. The learned counsel appearing for the petitioner has contended with vigor before this Court, that despite this Court through making a direction, as, carried in paragraph 8 of a verdict made on 21.11.2018, upon CRM-M-41066-2015, to the learned trial Judge concerned, and, also upon the prosecution concerned, to not grant or avail any further opportunities for adducing prosecution evidence, yet the mandate carried in paragraph 8 of verdict (supra),

paragraph whereof extracted hereinafter has been repeatedly breached, and, violated at the instance of the public prosecutor concerned.

*“8. The Court has also gone through the judgment referred to and relied upon by learned counsel for the private respondents in **Mohit @ Sonu's case (supra)**. However, the above detailed facts do make out a case that this Court under Section 482 Cr.P.C. certainly has the power to interfere and set-aside the impugned orders. Accordingly, the impugned orders dated 7.10.2015 and subsequent order dated 17.11.2015, whereby application under Section 311 Cr.P.C. was dismissed, are set-aside and prosecution is given one more opportunity to conclude the evidence. However, it is made clear that on the date fixed for the purpose by learned trial Judge, the complainant as well as private witness shall remain present in the Court and the summons of official witness i.e. Medical Officer shall be issued by the Court below and the Court shall ensure the presence of the said witnesses for recording their statements and no further adjournment shall be given beyond that date.”*

5. Therefore, the learned counsel for the petitioner, makes a challenge to the order made subsequent thereto, on the prosecutor's application cast under Section 311 Cr.P.C., order whereof is comprised in Annexure P-7, wherethroughs, an endeavour was made for placing on record, the CT scan report, as became mentioned in the MLR concerned, and, besides for examination of the author thereof. He contends with vigor, that the affirmative orders passed, upon the application filed under Section 311 Cr.P.C., rather subsequent to the afore mandate being carried in paragraph 8 of the verdict, as, made by this Court, does completely breach the absolute diktat carried therein, and, therefore, he contends that the impugned order is unmeritworthy, and, is liable to be quashed, and, set aside.

6. However, the afore made prayer before this Court by the learned counsel for the petitioner cannot be accepted, as he has read in isolation the above extracted paragraph, and, has not borne in mind the context in respect

whereof it became passed. The relevant context in respect whereof, it became rendered, is to be gathered from the subsequent thereto paragraph, as occurs in verdict (supra), wherein this Court has ordered, that the learned trial Judge ensuring the issuance of summons, upon the prosecution witnesses concerned, for theirs making their respective appearances before him, for theirs examinations-in-chief, and, besides their cross-examinations being recorded by the learned trial Judge concerned. Consequently, if the learned trial Judge concerned, had issued summons, and, yet the prosecution witnesses did not appear, thereupon, there was no breach of the orders (supra), on the part of the learned trial Judge concerned.

7. It would otherwise arise, if no summons were issued against them. It is fairly stated at the bar, by the learned counsel for the petitioner, that the evidence of the prosecution witnesses, as, reflected in the list of prosecution witnesses, has been recorded, both in their respective examinations-in-chief, and, also in their respective cross-examinations. However, no evidence/material in support of the afore submission has been placed on record by the learned counsel for the petitioner. Therefore, at this stage it cannot be firmly concluded that the entire list of prosecution witnesses has been exhausted.

8. Be that as it may, moreover, the import of the above paragraph carried in verdict (supra), as made by this Court, cannot be construed to completely estop the prosecution, to after the exhaustion of the list of prosecution witnesses, to re-recourse the procedure contemplated under Section 311 Cr.P.C., significantly given the above statutory provision(s), and, other compatible statutory provisions, as, carried in Section 311 of the Cr.P.C., do not create, any statutory estoppels against the prosecution to re-recourse as, and, when deemed fit, the statutory provisions carried in Section 311 Cr.P.C., or other

compatible provisions therein. If the afore estoppel is created against the prosecution, thereupon, the principle underlying the mandate carried in Section 311 Cr.P.C., inasmuch as, as and, when incriminatory evidence of grave evidentiary vigor, does surface, and, also when it is just, and, essential for sustaining the charge, rather being ensured to become complied, and, obviously the learned trial Judge concerned, after bearing in mind all the relevant parameters (supra), becoming hence enjoined to either accept the apposite application or to dismiss it.

9. Bearing in mind, the above formulated underlying principles governing, and, regulating the rejections, and, allowings of application(s), cast under Section 311 Cr.P.C., and, irrespective of the fact, that there is no statutory estoppel against the prosecution to re-rear application(s) under Section 311 Cr.P.C., principles whereof become comprised in the evidence strived to be adduced being just, and, essential, rather for sustaining the charge, thereupon, this Court is of the firm belief, that since the prosecution evidence strived for being adduced became comprised in the CT scan report, hence bearing reference No.158 of 07.03.2011, and, also given its becoming mentioned in the MLR drawn by the Doctor concerned. Therefore, the adduction into evidence of the afore was just, and, a fair endeavour of the prosecution, to therethroughs, make concerted efforts to prove the charge against the accused. Moreover, its mere adduction was not sufficient, the author thereof was also required to be stepping into the witness box, to prove his making it, also thereafter, it was permissible for the defence counsel engaged by the accused to cross-examine him. Therefore, for the afore made reasons, and, when obviously, an opportunity to cross-examine the Doctor concerned, or the author, who prepared the CT scan

report, was always available, thereupon this Court hence does not deem it fit, and, appropriate to quash the impugned order, as, carried in Annexure P-7.

10. It is directed that the learned trial Judge concerned, shall ensure, unless for valid reasons, that the trial entered upon, case arising from FIR (supra), becomes concluded within six months hereafter.

11. Disposed of.

31.03.2022

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(SURESHWAR THAKUR)
JUDGE

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