

CRR-3881-2017

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

**CRR-3881-2017 (O & M)
Date of decision: 15.09.2022**

Balak Ram

...Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Prashant Bansal, Advocate,
for the petitioner.

Mr. IPS Sabharwal, DAG Punjab.

Mr. Rahul Sharma, Advocate,
for respondents No.3 to 10 and 14 to 18.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present revision is to the order dated 09.08.2017 passed by learned Addl. Sessions Judge, Patiala, whereby applications moved by the petitioner-complainant, under Section 311 Cr.P.C., for summoning of Mrs. Geetu Sharma, Radiologist, and Dr. Varinder Kaur from C.T. Scan Centre, Department of Radio-diagnosis, Rajindra Hospital, Patiala, as witnesses, have been dismissed.

At the outset, learned counsel for the petitioner withdraws the revision qua summoning of Mrs. Geetu Sharma, Radiologist.

Ordered accordingly.

The background facts in brief which may be relevant for the purpose are that the petitioner filed an application dated 19.07.2017 under Section 311 Cr.P.C, seeking that Dr. Varinder Kaur, Department of Radio-Diagnosis, Rajindra Hospital, Patiala, be summoned as a witness. The ground stated in the application is that the petitioner and his brother,

CRR-3881-2017

namely, Gurmeet Singh were got admitted in Civil Hospital, Ghanaur; that thereafter, Gurmeet Singh was referred to Rajindra Hospital, Patiala, where CT Scan of his head was conducted on 07.11.2014 by Dr. Varinder Kaur, Department of Radio Dianosis, Rajindra Hospital, Patiala, against Registration No.PMC-43306, CT Scan Centre.

In response to the aforesaid application, respondents No.3 to 10 and 14 to 18 filed reply with the averments that the petitioner-complainant had never stated anything in the complaint or during evidence with regard to any CT Scan or any injury being referred to CT Scan for injured-Gurmeet.

Learned trial Court after considering the rival submissions of the learned counsel for the parties, dismissed the aforesaid application on the ground that the complaint filed by the petitioner was silent regarding such aspect.

Aggrieved there against, the present revision petition has been filed.

Learned counsel for the petitioner contends that evidence of Dr. Varinder Kaur, as to the extent of CT Scan of Gurmit Singh, is required to arrive at a just decision of the matter. He also emphasises that Dr. Varinder Kaur is an independent professional witness whose medical opinion must be produced as it is relevant to the case at hand.

On the other hand, learned counsel for respondents No.3 to 10 and 14 to 18, while opposing the submissions made by the learned counsel for the petitioner, submits that the accused have been charge-sheeted under Sections 323, 324, 506 and 148 read with Section 149 IPC; that there is no necessity of examination of Dr. Varinder Kaur, and that name of the

CRR-3881-2017

aforesaid doctor has not been mentioned in the list of witnesses attached with the complaint.

I have heard the learned counsel for the parties.

Section 311 Cr.P.C. reads as follows:-

"311. Power to summon material witness, or examine person present. - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

The scope of the provision has been considered by the Supreme Court in several decisions. The Hon'ble Supreme Court in [Natasha Singh vs. Central Bureau of Investigation \(State\)](#) (2013) 5 SCC 741, has held that the object of the provision is to enable the Court to determine the truth and to render a just decision after scrutiny of relevant facts and on obtaining proper proof. Although it cannot be used to fill up a lacuna or cause prejudice to the accused, the power is required to be exercised if the evidence of the proposed witness is likely to be germane to the issue.

It is the case of the petitioner that injured-Gurmeet Singh was referred to Rajindra Hospital, Patiala, where CT Scan of his head had been conducted by Dr. Varinder Kaur. The case is at the stage of leading evidence by the complainant.

The aim of every court is to discover the truth. However, the discretionary power vested under [Section 311 Cr.P.C.](#) has to be exercised

CRR-3881-2017

judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice. In the considered opinion of this Court, the medical evidence is essential to arrive at a just determination of the case.

In the considered opinion of this Court, in case the aforesaid witness is summoned, no hardship or prejudice would be caused to the accused for the reason that the witness would be subject to cross-examination as per the provisions of Cr.P.C.

In view of the above discussion, this Court finds that application moved by the complainant, under Section 311 Cr.P.C. for summoning Dr.Varinder Kaur is allowed, and the impugned order dated 09.08.2017 passed by learned Addl. Sessions Judge, Patiala, is set aside to the aforesaid extent. The trial Court is directed to summon the aforesaid witness alongwith the relevant record.

Disposed of.

15.09.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No