

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

Sr. No.224

**CRM-M No.49192 of 2019
Date of decision: 28.03.2022**

Jagjit Singh

..Petitioner

Versus

State of Punjab

..Respondent

(Heard through Video-Conferencing)

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, Punjab
for respondent No.1-State.

Mr. Jagjot Singh Lalli, Advocate
for respondents No.2 to 9.

MEENAKSHI I. MEHTA J

Feeling aggrieved by the order dated 22.10.2019 (Annexure P-1) handed down by learned Additional Sessions Judge, Kapurthala (for short “the trial Court”) whereby the application moved by the petitioner/prosecution under Section 311 Cr.P.C in the Criminal case registered at Police Station Sadar Kapurthala, vide Report No.24 dated 26.03.2014, under Sections 307, 326, 148 and 149 IPC (for short “the second case”) as the cross-version of the criminal case pertaining to the FIR bearing No.32 dated 24.03.2014 registered at the same police station, under Sections 302, 307, 324, 148 and 149 IPC (for short 'the first case'), has been dismissed, the petitioner-complainant has preferred this petition

to lay challenge to the same.

As per the brief factual-matrix culminating in the present petition, the subject FIR has been registered against the petitioner and his co-accused whereas the above-said Report has been entered against the opposite party at the instance of the petitioner as the cross-version because the genesis thereof lies in the same occurrence. The petitioner and his co-accused examined Dr. Meghna Bansal as DW-4 in their defence evidence in the first case. The above-named Doctor was also examined as PW-10 during the course of trial in second case but the CT Scan films qua the petitioner and other injured persons namely Avtar Singh and Pawan Preet Singh and the reports in respect of the same could not be duly proved at that time as the original ones were annexed in the record/file of the said first case and only the photocopies of the said reports were available which were marked as 'A' to 'C'. The petitioner, being the complainant in the second case, had moved an application under Section 311 Cr.P.C earlier also for re-summoning and re-examining the above-said PW-10 to prove the above-mentioned medical record in the said case but it had been withdrawn by him on 22.11.2018. Thereafter, the Public Prosecutor moved the application Annexure P-9 with a prayer for recalling the said PW-10 and to summon the Ahlmad concerned along-with the file of the first case to prove the afore-said medical record which has been dismissed vide the impugned order Annexure P-1.

Respondents No. 2 to 9 have filed their joint Reply asserting therein that the above-said application had been moved at a belated stage

just to fill up the lacunae in the prosecution evidence and the same was also not maintainable in view of the fact that the first application, as moved by the petitioner earlier, had been withdrawn by him.

However, respondent No.1-State has preferred not to file any reply to this petition.

I have heard learned counsel for the petitioner as well as learned State counsel for respondent No.1 and learned counsel for respondents No. 2 to 9 in the instant petition and have also perused the record carefully.

Learned counsel for the petitioner has contended that while examining the afore-named doctor as DW-4 in their defence evidence in the first case, the petitioner and his co-accused had produced the original CT Scan films and the reports in respect thereof, on the record but at the time of examining the same Doctor as PW-10 in the second case, the said films could not be produced whereas the photocopies of the said reports, as available at that time, were merely marked as 'A' to 'C' and thus, the same could not be duly proved and exhibited whereas the said medical record is material and necessary for the just and proper decision of the case.

Per contra, learned counsel for respondents No.2 to 9 has argued that the petitioner/prosecution moved application Annexure P-9 with the ulterior motive to fill up the lacunae in the prosecution evidence as already led on the record and that too, at a belated stage when the case had reached the stage of recording the defence evidence and for hearing the final arguments and even otherwise, the second application for seeking the same

relief was not maintainable in view of the fact that the petitioner himself had withdrawn the first application moved by him for the same purpose and it being so, this petition be dismissed.

The above-referred CT Scan films and the reports qua the same (original ones) are stated to have already been produced by the petitioner and his co-accused on the record while examining the above-named Doctor as DW-4 in their defence evidence in the first case and hence, only the photocopies of the said reports were available on the file and to have, therefore, been merely marked as 'A' to 'C' whereas the CT Scan films were not available on the record at the time of examining the said Doctor as PW-10 in the second case. Now, the petitioner intends to recall and re-examine the afore-named PW-10 and also to summon the concerned Ahlmad along- -with the judicial file of the first case, in order to duly prove the said medical record so as to substantiate the allegations as levelled against the accused party in the second case. From the above-narrated facts, it becomes explicit that the afore-mentioned medical record is relevant, material and essential for the just and proper as well as effective decision of the case and mere delay in moving the application Annexure P-9 does not suffice at all to reject the same because it has been provided in Section 311 Cr.P.C itself that in such an eventuality, these provisions can be invoked at any stage of any enquiry, trial or other proceedings under the Code.

As regards the factum of the first application, as moved by the petitioner earlier for seeking the same relief, having been withdrawn by him, the same cannot be construed to be a bar for the petitioner/prosecution to

move the second application for the same purpose in the circumstances when, as discussed in the preceding paragraphs, the said medical record would be necessary for the just decision of the case. It has also been held by the Apex Court in **Rajendra Prasad Vs. The Narcotic Cell through Its Officer in charge, Delhi 1999 (3) RCR (Criminal) 440** that “*the contention of the appellant as a legal proposition that the Court could not exercise the power of re-summoning any witness if once that power was exercised, could not be accepted nor could the power be whittled down merely on the ground that the prosecution discovered latches only when the defence highlighted them during final arguments and the power of the Court was plenary to summon or even recall any witness at any stage of the case if the Court considered it necessary for a just decision and the steps, which the trial Court permitted in this case for re-summoning certain witnesses could not, therefore, be spurned down nor frowned at*”. In the light of these observations, it is explicit that Application Annexure P-9 is maintainable.

As a sequel to the foregoing discussion, it follows that the impugned order Annexure P-1 deserves to be set aside. Resultantly, the revision-petition in hand is allowed and the said impugned order is hereby set aside and the trial Court is directed to afford the opportunity to the petitioner/prosecution to recall the afore-named PW-10 for her re-examination to prove the above-said medical record and also to summon the Ahlmad along-with the file of the first case titled as **State Vs. Jagjit Singh and others**. However, keeping in view the fact that the case pertains to the year 2014, the prosecution (the Public Prosecutor concerned) shall

make the best possible endeavours to ensure/procure the presence of PW-10 in the Court without any delay.

The parties are directed to appear before the trial Court on 18.04.2022.

28th March, 2022
pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No