

129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-59190 of 2022(O&M)

Date of Decision: 19.12.2022

Salwinder Singh & Anr.

...Petitioners

Versus

State of Punjab & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. R.K. Arya, Advocate
For the petitioners.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner seeking quashing of order dated 14.09.2022 (Annexure P-4) passed by the Court of learned Judicial Magistrate, Gurdaspur whereby the application moved by the prosecution under Section 311 Cr.P.C. for recalling witness namely Dr. Raj Kumar for his re-examination in criminal case titled State Vs. Baljit Singh & Anr., is dismissed.

I have heard the counsel for the petitioner and gone through the impugned order, Annexure P-4.

The learned trial Court dismissed the application filed under Section 311 Cr.P.C. by the prosecution with following observations:-

“Heard. Record perused. Perusal of file reveals that earlier the prosecution had moved an application under Section 311 Cr.P.C. r/w Section 65 of Indian Evidence Act for proving the MLRs of Salwinder Singh and Harwinder Singh by way of secondary evidence by stating that Dr. Harpreet Singh, who

had conducted the medical of injured persons had gone abroad carbon copies of MLRs of injured, which were already on judicial file were sought to be proved by calling some medical officer, who was conversant with the handwriting of Dr. Harpreet Singh. The said application was allowed by the Court vide order dated 17.02.2020 and Dr. Raj Kumar was examined as PW-11 who has proved the signatures of Dr. Harpreet Singh on the carbon copies of MLRs. Now, the prosecution again moved the application for recalling witness Dr. Raj Kumar for his re-examination on the ground that he did not produce the relevant record pertaining to the MLRs of injured persons. As mentioned above, Dr. Raj Kumar has already proved the signatures of Dr. Harpreet Singh on the carbon copies of MLRs after being so allowed by the Court vide order dated 17.02.2020. As per the prosecution the original register of MLR was in possession of Dr. Harpreet Singh, who had gone abroad. This Court has failed to understand what original record the prosecution wants to produce in the Court by reexamining Dr. Raj Kumar when as per the prosecution the original record of MLRs of injured persons is in possession of Dr. Harpreet Singh, who had gone abroad. Accordingly, the present application moved by prosecution is dismissed being devoid of any merit.”

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 object underlying 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record as has been held by the Hon'ble Apex Court in **Iddar & Ors. Vs. Aabida & Anr., 2007(3) RCR(CrL) 909.**

This Court is of the view that if the evidence of witness named in the application is essential for the just decision of the case, power under Section 311 Cr.P.C. can be exercised irrespective of the stage of trial. The documents which the prosecution wants to prove by recalling the concerned doctor are official documents and are necessary for the proper adjudication of the case. However, while passing the impugned order the learned trial Court has not given any observation as to whether the documents in question are necessary for the just decision of the case.

In view of the above, the impugned order being not passed in conformity with the provisions of Section 311 Cr.P.C. is hereby set aside and the trial Court is directed to relook into the matter afresh in the light of the provision of Section 311 Cr.P.C. and the settled law as discussed above and to decide the application moved by the prosecution under Section 311 Cr.P.C. within next 15 days of receipt of copy of this order. The petitioner is directed to appear before the learned trial Court on the date already fixed.

Disposed of.

19.12.2022
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No