

CRR No.377 of 2020

Date of Decision: April 13, 2023

Vinod Kumar

...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Abhimanyu Singh, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

Ms. Ishita Jain, Advocate for respondents No.2 to 8.

DEEPAK GUPTA, J.

Challenge in this revision petition is to order dated 09.01.2020 passed by learned Sub Divisional Judicial Magistrate, Bilaspur whereby application under Section 311 Cr.P.C., moved by the petitioner – complainant during proceedings of the case arising out of FIR No.55 dated 30.04.2016 registered at Police Station Sadhaura District Yamuna Nagar under Sections 148, 149, 323, 325, 341, 506 IPC was dismissed.

2. FIR in question was recorded on the statement of petitioner. The respondents- accused were facing trial. The case was at the stage of defence evidence/ arguments, when application under Section 311 Cr.P.C was moved by petitioner through learned Public Prosecutor stating therein that Investigating Officer of the case had not taken into possession the X-Ray film of left arm and hand of the complainant from Gaba Hospital during investigation and thus, it did not form part of challan. It was stated further that although Investigating Officer had obtained opinion of the concerned doctor qua the X-Ray report as per which Ulna and metacarpal of left side of complainant was fractured but

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X-ray film of complainant was necessary piece of evidence/proof on behalf of the prosecution. Prayer was accordingly made to summon one Rakesh/concerned Radiologist of Gaba Hospital, Yamuna Nagar along with X-Ray film of the complainant, by way of additional evidence.

3. Application was opposed. Learned trial Court dismissed the application by way of the impugned order after observing that Dr. Vandana, Medical Officer of Gaba Hospital, Yamuna Nagar had already been examined to prove the X-Ray report dated 25.04.2016 besides the treatment and discharge summary of the complainant Vinod Kumar and, so, application appeared to have been filed just to delay the proceedings.

4. It is contended by learned counsel for the petitioner that in the absence of X-Ray film being proved on record, X-Ray report as proved by Dr. Vandana, may not be admissible and it may weaken the prosecution case. It is contended further that application under Section 311 Cr.P.C can be moved at any stage and that for the lapse on the part of Investigating Officer in not making the X-Ray film as part of challan, should not prejudice the case of the petitioner/ prosecution.

5. Section 311 Cr.P.C reads as under:-

“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.”

6. As is evident from the aforesaid provision, Section 311 Cr.P.C has two parts. In the first part, the Court has the discretion to

summon any person as a witness or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined. However, as per the second part, the use of the word “shall” would indicate that it is mandatory for the Court to summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for just decision of the case.

7. In the present case, although the X-Ray report has already been proved on record as observed by learned trial Court but X-Ray film pertaining to the same X-Ray report, is required to be proved by the prosecution and for that purpose, petitioner wants the summoning of the concerned witness so as to prove the X-Ray film. The said evidence is essential for just decision of the case. Therefore, impugned order is set aside. Trial Court is directed to summon the concerned witness for proving the X-Ray film of complainant Vinod dated 25.04.2016 and then proceed further in accordance with law.

April 13, 2023
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(DEEPAK GUPTA)
JUDGE

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