

201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-12017-2016

Date of Decision: 19.12.2023

Sukhmander Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vikas Garg, Advocate
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

Mr. Arshdeep Singh Brar, Advocate,
for respondent No.2.

HARKESH MANUJA, J.(Oral)

1. By way of present petition filed under Section 482 Cr.P.C. prayer has been made for quashing two separate orders dated 30.03.2016 (Annexures P-6 & P-7) passed by the Trial Court, whereby, the application filed under Section 311 Cr.P.C., at the instance of prosecution for the purpose of recalling Dr. Gagandeep Singh (PW-4) and Dr. Subhash Singla (PW-5), stood rejected.

2. Briefly stating, upon registration of FIR No.203, dated 20.07.2014, under Sections 341, 323, 34 IPC (Sections 308 and 326 IPC added later on), Police Station Dharamkot, District Moga, against the private respondents, challan was filed against them, followed by framing of charges on 05.02.2015 and the matter was listed for prosecution evidence.

During trial, Dr. Gagandeep Singh (PW-4) and Dr. Subhash Singla

(PW-5), examined the petitioner-injured on 19.07.2014 and 21.07.2014 and their statements were concluded on 08.06.2015 and 28.03.2016 respectively, however, two applications under Section 311 Cr.P.C. were filed at the instance of prosecution seeking recalling of the aforementioned two witnesses for the purposes of proving the medical record, which could not be produced by the aforementioned two doctors while their statements were being recorded. The aforesaid two applications were opposed at the instance of private respondents.

3. The Trial Court vide two separate orders dated 30.03.2016 rejected the prayer made at the instance of prosecution.

4. Impugning the aforementioned two orders, learned counsel for the petitioner-complainant submits that the medical record in the shape of CT Scan Film/report as well as report relating to the eye-sight of the petitioner/injured were very much necessary for complete and effective adjudication of the trial, thus, the Court below went wrong while declining the prayer made in the two applications filed under Section 311 Cr.P.C.

5. On the other hand, learned State counsel assisted by learned counsel for the private respondents submit that the orders passed by the Court below warrants no interference as sufficient opportunity was afforded to the prosecution to examine Dr. Gagandeep Singh (PW-4) and Dr. Subhash Singla (PW-5) along with their medical opinions.

6. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioner.

7. Though, undoubtedly, the prosecution availed sufficient time to

examine Dr. Gagandeep Singh (PW-4) and Dr. Subhash Singla (PW-5), however, their medical opinions in the shape of CT Scan film/report and the eye-sight report were never produced and proved on record. The aforesaid medical opinions, which relate to the injuries on the person of the petitioner/victim, would definitely help the Trial Court to arrive at a just and fair conclusion and in case the said medical evidence is not brought on record, it would cause serious prejudice to the victim/injured.

8. In the circumstances of the present case, where the petitioner is not the master of the prosecution, besides even in control of the evidence, the prayer for recalling of the two witnesses cannot be declined for the reason of filling up of lacuna by the prosecution.

9. Considering the fact that the FIR in question was registered on 20.07.2014 and a period of more than 09 years have goneby, the prosecution shall be afforded one last effective opportunity to recall and re-examine the aforementioned two witnesses, through the process of the Court.

10. In view of the above, the present petition is allowed and the impugned orders dated 30.03.2016 passed by the Trial Court are hereby set aside, thereby, granting permission to recall Dr. Gagandeep Singh (PW-4) and Dr. Subhash Singla (PW-5).

19.12.2023

sonika

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: yes/no

Whether reportable? yes/no