

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(201)

CRM-M-30774-2016

Date of Decision: 24.02.2023

Kamlesh Sharma

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Vipin Mahajan, Advocate for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. A.S. Manaise, Advocate for
respondents no.2 to 21.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed praying for quashing of order dated 13.6.2016 (Annexure P-7) passed by learned JMIC, Gurdaspur in case no.142/11.6.2007 titled as State Vs. Swami Sadanand and others in FIR No.48 dated 3.4.2006 registered under sections 323, 324, 325, 427, 506, 452, 148, 149 IPC at Police Station, Dinanagar, whereby application moved by the prosecution under section 311 Cr.P.C for additional evidence to summon Dr. Jagjiwan Lal, Radiologist, has been dismissed.

Learned counsel for the petitioner has vehemently contended that the petitioner/complainant, who was the Principal of the school had lodged the FIR in question, wherein the allegations were made against the accused persons regarding tress-passing in the school and thereafter beating the school staff and ransacking the school premises. He submits that a cross-version to the same was also lodged by the other side and both the versions are pending trial. It is submitted that during investigation the injured persons were medically examined and their X-ray were also

conducted by the Radiologist. It is also submitted that on conclusion of the investigation the medical report as well as the X-ray report were made part of the challan. Counsel submits that during trial Dr. B.S. Bajwa proved on record the report vide which injury no.4 caused to injured Pardeep Kumar was declared grievous in nature, however, the X-ray report which was conducted by Dr. Jagjiwan Lal, Radiologist could not be proved and exhibited as Dr. Jagjiwan Lal, Radiologist was not cited as a witness. It is further submitted that though the report given by Dr. Jagjiwan Lal, Radiologist is part of the challan, however, the same could not be proved in the absence of Dr. Jagjiwan Lal, who had made it. He submits that for proving the same examination of Dr. Jagjiwan Lal is necessary for the just decision of the case and thus the petitioner filed an application under Section 311 Cr.P.C for summoning the said witness as the witness to prove the X-ray report made by him. Counsel submits that provisions of Section 311 Cr.P.C being sacrosanct in nature can be invoked at any stage before the pronouncement of the judgement, if, the evidence sought to be produced is essential for the just decision of the case. Counsel has relied upon the judicial precedent in case of ***Dinesh Kumar Shastri Vs. State of Punjab and others (CRM-M-10288-2015 decided on 3.3.2016)***. Counsel submits that the provisions of section 311 Cr.P.C allow summoning of the witnesses at any stage and hence the Trial Court has fallen in error in declining the same and hence the impugned order deserves to be set aside.

Learned counsel for the private respondents has opposed the submissions made by counsel for the petitioner and submits that the trial of the case is at an advance stage as the defence evidence is going on. He submits that the respondents are facing trial for the last about 15 years and

thus it is apparent that the petitioner has filed the present petition only in order to prolong the trial. He submits that petitioner has availed various opportunities to lead her evidence but she intentionally did not summon Dr. Jagjivan Lal only in order to prolong the trial. It is submitted that the stage of the trial at which the petitioner has approached this court is crucial and the same would lead to the conclusion that this petition has been filed only to harass the respondents. It is submitted that there is no merit in the petition and the same deserves to be dismissed.

Having heard learned counsel for the parties, this court finds that the injured/complainant had filed the application under Section 311 Cr.P.C which has been dismissed by the Trial Court. The preliminary objections raised by counsel for the respondents is regarding the maintainability of the present petition. It is not disputed that the petitioner assails the impugned order.

I have heard learned counsel for the parties at length and have gone through the records carefully.

Needless to say that the present case is of version and cross-version. This would be in the domain of the Trial Court to assess as to which party was the aggressor, however, in the occurrence Pardeep Kumar injured had suffered injuries and he was medically examined. His X-ray was conducted by Dr. Jagjivan Lal and the report prepared by him is also part of the challan. The summoning of the doctor to prove the report in the opinion of the court appears to be genuine. There is no dispute regarding the provisions of section 311 Cr.P.C to be used liberally, however, the court has to be cautious in invoking its power under Section 311 Cr.P.C and examine if the application under Section 311 Cr.P.C has been filed to delay the trial.

Besides this, Section 311 Cr.P.C can be invoked if it appears to be essential to the just decision of the case and not for plugging the loopholes in the case. There is no gainsaying that the court has been granted ample power under Section 311 Cr.P.C to prevent the injustice. However, in view of the law settled, it is apparent that the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Reliance in this regard can be placed in case of ***Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019(14) SCC 328***. Section 311 Cr.P.C is reproduced hereunder:-

“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.”

Taking into consideration the arguments raised by counsel for the parties on the anvil of the law settled, this Court is of the opinion that the learned Trial Court has fallen in error in declining the genuine prayer made by the petitioner. Hence, the impugned order dated 13.6.2016, passed by learned JMIC, Gurdaspur, is set aside. The Trial Court would provide one effective opportunity to the petitioner for examining Dr. Jagjivan Lal, Radiologist subject to payment of Rs.25,000/- as costs to be paid by the petitioner to the Bar Association Welfare Fund, High Court. Learned Trial

Court would ensure that petitioner has paid the costs imposed by this court before granting her opportunity to examined Dr. Jagjivan Lal. Needless to say that the respondents would be at liberty to cross-examine the witness produced by the petitioner. It is further clarified that in case the Trial Court finds that the petitioner is misusing this order in any manner, it would be within the domain of the Trial Court to take necessary action against her in accordance with law.

Petition is disposed of in the aforesaid terms.

(RAJESH BHARDWAJ)
JUDGE

24.02.2023

lucky	Whether speaking/reasoned:	Yes/No
	Whether Reportable:	Yes/No