

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

201

CRM-M-30776-2017 (O&M)
Date of decision : 03.02.2023

Yunus

.....Petitioner(s)

VERSUS

State of Haryana and others

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Deepanshu Matya, Advocate for the petitioner

Ms.Aditi Girdhar, AAG, Haryana

Mr.Sunil Panwar, Advocate for respondent Nos. 2 to 5

AMAN CHAUDHARY, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 03.08.2017, passed by learned Additional Sessions Judge, Mewat, dismissing the application filed by the petitioner-complainant under Section 311 Cr.PC.

Learned counsel for the petitioner submits that the application filed for summoning and examining Dr.Parveen Yadav alongwith MLC of Saddik and Jubair dated 27.03.2015 and other record of treatment from Vardan Hospital and Trauma Centre, as mentioned in application has been wrongly dismissed by learned trial Court vide the impugned order. Non-

examination of the said witness will cause an irreparable loss to the petitioner, he therefore, prays that one opportunity be granted to him to produce and prove the medical record of the said injured by examining the aforesaid witness.

Per contra, learned counsel for respondent Nos. 2 to 5 submits that the learned trial Court has rightly dismissed the application as there was no evidence on record which shows that the said injured were admitted in the said hospital. The application has been filed at a belated stage to fill up lacuna, when the entire evidence has been led and the case is at the final stage.

Heard.

The facts that weighed with the learned trial Court while declining the application read thus;

“In Ex.P-2 i.e. statement made by complainant Yunus, on the basis of which FIR was registered, it was mentioned that only injured Saddam was brought to Vardhan Hospital and Trauma Center, Sohna and there is no reference that injured Saddik and Juber were also brought there. It is correct that in his examination-in-chief injured Saddiq as PW-1 testified that Arshad and Faruk had brought the injured to Vardhan Hospital, Sohna however, during his cross examination he clarified that Arshad had removed his son Saddam to Vardhan Hospital and he (PW-1) had not accompanied his son to that hospital. On the other hand, co-injured Juber (PW-2) has not claimed at all that he was brought to Vardhan Hospital, Sohna. Rather, while going a step further, he disclosed during cross-examination that he as well as injured Saddik remained admitted in GH, Sohna from 2230 hours on 27.03.2015 to 0930 hours on next day.

When both the injured were in Government Hospital, Sohna since 2230 hours on 27.03.2015, they could not have obtained medical treatment in Vardhan Hospital, Sohna on 27.03.2015 at 2300 hours, as so mentioned in copy of non MLC of Saddik dated 27/03/15 (annexed with application in hand). Even otherwise, in the said non MLC of Saddik (name of father not mentioned), only one abrasion was found on parital region of the patient whereas according to Ex.P-15 i.e. copy of MLR dated 28.03.2015, one lacerated wound was there on the upper occipital of injured Saddik apart from bruise on the chest and swelling on the right hand. It is amply clear that injuries found on the person of injured Saddik as mentioned in MLR Ex.P-15 do not tally with that mentioned in the said non MLC.”

Before proceeding further, it would be apposite to refer to Section 311 Cr.P.C., which reads thus:-

“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.”

Indubitably the power conferred on the court under the above provision is wide and wholesome to summon any person or even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised if the facts and circumstances call for, so as to arrive at a just decision of the case.

Adverting to the facts of the present case, firstly, the complainant-petitioner has failed to disclose any reason in the application filed under Section 311 CrPC or the petition before this Court for non-production of the record of Vardan Hospital during the course of evidence and seeking to produce the same when the case was fixed for defence evidence, secondly, as has been rightly noticed by Court that when both the injured were under treatment in the Government Hospital, they could not have at the same time been also under treatment at Vardan Hospital. Furthermore, in the prescription of the said Hospital, Annexure P-3, neither the time of admission nor that of discharge is there. Similarly, it is a '*Non MLC*' and date mentioned is '27/3/5'.

In the reply filed by the State to the present petition, it has been mentioned that all 17 PWs have been examined and the matter is at the final stage and the case was fixed for 2.2.2023 awaiting the orders from this Court.

Since the power under the said provision should be invoked by the court only for strong and valid reasons to meet the ends of justice and exercised with great caution and circumspection as held by Hon'ble The Supreme Court in the case of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation**, (2019) 14 SCC 328, the learned trial Court has taken due care by not exercising the power under this section as the complainant-petitioner, was not able to demonstrate that discovery of relevant facts with regard to treatment record from Vardan Hospital or obtaining proper proof of thereof, is necessary to arrive at a just decision in the case, which is the prime purpose of the provision and it should not be used for filling up the lacunae left by the prosecution.

In view of the afore discussion, this Court finds no illegality or perversity requiring any intervention in the impugned order, as a sequel thereto, the present petition is dismissed, being bereft of merits.

03.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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