

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(201)

CRR-3541-2017

Date of Decision: 09.02.2023

Narender Yadav

--Petitioner

Versus

State of Haryana & another

--Respondents

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

Present:- Mr. Sumeet Jain, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

Mr. Deepender Singh Brar, Advocate for
respondents no.2 to 9.

RAJESH BHARDWAJ.J (Oral)

The petitioner has approached this court by way of filing the present revision petition impugning the order dated 20.9.2017, passed by learned Addl. Sessions Judge, Gurugram, whereby the application filed by the petitioner under Section 311 Cr.P.C in a case FIR No.63 dated 6.4.2010 registered under sections 323, 324, 452, 506, 307, 34 IPC at Police Station, Badshahpur, for summoning concerned clerk of D.C.P., Head Quarter Gurugram for producing order dated 4.8.2016 by which ASI Surender Singh was held guilty of misconduct and did not disclose X-ray and CT Scan film in respect of Dharmender son of Rameshwar, has been dismissed.

This court vide order dated 28.9.2017 had issued notice of motion to the respondents and in the meanwhile had restrained the learned Trial Court from pronouncing the final order.

Learned counsel for the respondents has raised a preliminary submission that the application filed under Section 311 Cr.P.C by the petitioner has been declined by the Trial Court by passing the impugned

order. He submits that the order passed is interlocutory in nature and thus the revision filed would not be maintainable and the only remedy with the petitioner would be by way of a petition under Section 482 Cr.P.C.

Learned counsel for the petitioner has resisted the submission made by counsel for the respondents and submits that the petitioner is the victim in this case, who has been seriously prejudiced by virtue of the impugned order passed and he cannot be left remediless by preventing him from assailing the impugned order.

Learned counsel for the respondents has relied upon the judicial precedent in case of *Sethuraman Vs. Rajamanickam, 2010(5) R.C.R. (Criminal) 512.*

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 revision petition. It is not disputed that the petitioner cannot assail the impugned order.

Keeping in view the facts and circumstances of the case, this court finds it appropriate to invoke its inherent jurisdiction under Section 482 Cr.P.C and treat the present revision petition as a petition filed under Section 482 Cr.P.C and decide the same.

Learned counsel for the petitioner has submitted that the petitioner got registered FIR No.63 dated 6.4.2010 under sections 323, 324, 452, 506, 307, 34 IPC at Police Station, Badshahpur, District Gurugram. During the trial application under Section 319 Cr.P.C was filed by the prosecution on the basis of which respondents Ved Parkash, Sat Parkash

and Sonu were also summoned to face trial. He submits that in the incident three persons namely Rajesh, Narinder and Dharminder were injured and the injuries suffered by Dharminder were opined by the Medical Board to be dangerous to life. PW-3 Dr. Rakesh Singh, Orthopaedic Surgeon was examined to prove the injuries. He submits that ASI Surender Singh was the IO of the case and he deliberately did not produce the X-ray film and CT scan film with respect to the injuries suffered by Dharmender with intention to help the accused by deliberately leaving the loopholes in the case of prosecution. It is submitted that thereafter the petitioner sought the information under the RTI Act regarding the statement which was received in 2017. He submits that for the gross misconduct committed by the IO ASI Surender Singh a departmental inquiry was initiated against him and after inquiry he was found guilty and thus was imposed a punishment of imposing cut of 1% for one year in his pension with immediate effect vide order dated 4.8.2016 passed by the D.C.P., Headquarter, Gurugram. He submits that as this report was received by the petitioner in the year 2017 under the RTI Act, then he filed the application under section 311 Cr.P.C for producing the same on record which was essential for the just decision of the case. The petitioner duly prayed that the application under section 311 Cr.P.C be allowed by allowing the petitioner to produce the report dated 4.8.2016 on record and by summoning the official from the concerned department for proving the same. He has submitted that ASI Surender Singh is no other than the IO of the case who had intentionally not produced the X-ray and CT Scan films in respect of injured Dharmender, who had suffered injuries which were declared dangerous to life, speaks volumes of his tainted investigation and hence the production of the report

dated 4.8.2016 and the relevant witness from the department is essential for the just decision of the case. However, the learned Trial Court has failed to appreciate the same and thus drawn a wrong conclusion in declining the application under section 311 Cr.P.C. Counsel submits that the provisions of Section 311 Cr.P.C are sacrosanct in nature and the court can invoke its power under Section 311 Cr.P.C at any stage before the pronouncement of the judgement but the learned Trial Court ignoring the spirit of law and the law settled by the Hon'ble Supreme Court in various judgements, declined the same simply by holding that the application has been filed only in order to prolong the trial. It is submitted that from the facts and circumstances of the case it is apparent that the IO ASI Surender Singh not only faced a departmental inquiry but he was also held guilty by virtue of order dated 4.8.2016. It is submitted that the impugned order is totally unsustainable in the eyes of law and deserves to be set aside by allowing the petitioner to produce the documents and the relevant witness in the case.

Learned counsel for the private respondents has opposed the submissions made by counsel for petitioner. He has submitted that the FIR in this case was lodged in the year 2010 and the petitioners are facing trial from the last about 12 years. He submits that ASI Surender Singh has been examined twice, firstly before filing of the application under Section 319 Cr.P.C and secondly after the application filed under Section 319 Cr.P.C was allowed but the petitioner never put any such questions to the IO ASI Surender Singh and now when all the prosecution witnesses and defence witnesses have already been examined and the application under section 311 Cr.P.C has been filed only in order to prolong the trial against the

accused and hence the Trial Court has committed no illegality in dismissing the application under section 311 Cr.P.C filed by the petitioner.

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

It is apparent from the arguments raised before this court that the petitioner before this court is the injured witness, who is also the author of the FIR. Besides him there are two more injured persons namely Dharminder and Rajesh. The injuries suffered by Dharminder were declared dangerous to life. The X-ray and CT scan films sought to be produced before the learned Trial Court belong to the injuries suffered by Dharminder. On the allegation of not producing both these reports by the investigating agency for the appraisal of the court, IO ASI Surender Singh had been charge sheeted and he was awarded punishment of 1% cut for one year in his pension with immediate effect vide order dated 4.8.2016. 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

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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 20.9.2017, passed by learned Addl. Sessions Judge, Gurugram is set aside. The Trial Court would provide one effective opportunity to the petitioner for producing the report dated 4.8.2016 and the relevant witness to be examined in support of the same. 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 observes 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 him in accordance with law.

Petition is allowed in the aforesaid terms.

(RAJESH BHARDWAJ)
JUDGE

09.02.2023

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