

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-30973-2019****Date of Decision: February 22, 2023**

PREMCHAND

..... Petitioner

Versus

STATE OF HARYANA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Manish Soni, Advocate for the petitioner.

Mr. Rakesh Kumar Ambavta, A.A.G., Haryana.

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for setting aside an order dated 22.04.2019 passed by Ld. Addl. Sessions Judge, Gurugram whereby an application filed at the instance of petitioner invoking Section 391 CrPC stands dismissed.

Facts of the present case are that on account of having sustained injuries at the hands of private respondents, FIR No.150 dated 16.08.2009 under Sections 148, 149, 323, 427, 452 and 506 was registered at the instance of petitioner. Upon trial, learned JMIC, Gurugram vide its judgment dated 18.09.2015 passed an acquittal order in favour of respondents extending them the benefit of doubt by making inter alia the following observations:-

“In view of the fact that prosecution has failed to examine the concerned doctor who had prepared

medical report etc. of the injured , this Court is of the considered opinion that testimony of different prosecution witnesses who had witnessed the occurrence in question, has remained totally uncorroborated by the medical evidence which is a serious flaw in the case of prosecution and on this count guilt of accused remained unproved beyond all shadow of reasonable doubt.”

Aggrieved thereof, the petitioner filed first appeal before the Court of Ld. Addl. Sessions Judge Gurugram. During its pendency, the petitioner moved an application invoking Section 391 of Cr.P.C. seeking summoning of doctors namely, Dr. Sidesh Pandey, Dr. Pranav Choudhary and Dr. Swadesh. The aforesaid application filed at the instance of petitioner was dismissed vide order dated 22.04.2019.

Impugning the aforesaid order, learned counsel for the petitioner submits that the Court of Ld. Addl. Sessions Judge, Gurugram committed an error while rejecting the prayer made at the instance of petitioner while recording that despite having availed sufficient opportunity, the prosecution failed to conclude its evidence and thus, Section 391 CrPC was not to be exercised in its favour. He further submits that the point of delay in filing the application as recorded by the Ld. Court below in its impugned order was also not made out in the facts and circumstances of the present case as the application was moved immediately on having come to know about the correct address of the doctors concerned.

On the other hand, the prayer made herein has been vehemently opposed at the instance of respondents No.2-9 while

submitting that there has been delay on part of the petitioner while moving the application, as the appeal in the present case was filed on 26.11.2015 whereas the application was moved after a period of 2.5 years thereafter on 27.07.2018. He further submits that the prosecution having availed sufficient opportunity to lead its evidence cannot be thereafter permitted to fill up this lacuna to the disadvantage of the accused.

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

In the present case, charges were framed on 22.09.2010 and 28.07.2014. The three doctors now sought to be summoned by the complainant-petitioner were already mentioned in the list of witnesses filed along with challan. An application dated 24.07.2014 was moved at the instance of complainant so as to summon the aforesaid three doctors which was allowed by the trial Court, however, on account of their incomplete address those witnesses could not be served and examined. Despite there being a direction issued by the trial Court to the Ld. Public Prosecutor for providing their correct addresses, the same was never complied with. Faced with this, the petitioner-complainant, was given permission to summon the record-keeper of the concerned hospital so as to produce and prove the medical record, who while appearing as PW-7-Kapil Chaudhary identified even the signatures of these doctors. In view of the aforesaid facts and circumstances which already finds mention in

the impugned order itself it cannot be said that there was any kind of lack of due diligence on part of the petitioner, at the stage of trial.

As regards the delay in filing of application which has been taken to be as one of the reasons while declining the prayer made by petitioner, the same does not stand to reason in view of language, intent and purpose of Section 391 of Cr.P.C. besides even from the facts of the present case. Admittedly the three doctors now sought to be summoned could not be produced during trial for want of their correct addresses only. Apart from that, a perusal of Section 391 shows that its primary object is to secure ends of justice and fair play, as has been observed by the Hon'ble Supreme Court in case of **"Brig. Sukhjeet Singh (Retd.) MVC Vs. The State of Uttar Pradesh & Others"** 2019(2) Criminal Court Cases, Page 82, Para 16 thereof is reproduced hereunder for reference:-

"16. From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 Cr.P.C., 1973 of the Appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people."

Applying the aforesaid, to the facts and circumstance of the present case wherein the non-examination of doctors concerned was not on account of any negligence on the part of the petitioner & in fact all genuine and sincere efforts were made for the purpose of summoning

those doctors, the evidence of the doctors, being necessary for the disposal of the appeal and also in furtherance to grant of an opportunity of fair trial to the petitioner and also to serve the ends of justice, the petition is allowed. The impugned order dated 22.04.2019 is set aside allowing the application dated 27.07.2018 filed at the instance of present petitioner seeking summoning of doctors mentioned therein.

22.02.2023
tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>

