

CRM-M-49713 of 2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-49713 of 2022 (O & M)

Date of decision: 29.05.2023

Sunder

..... Petitioner(s)

V/s

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Tushar Gautam, Advocate,
for the petitioner(s).

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

Mr. Ashit Malik, Advocate,
for respondents No.3 to 5.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition is for quashing of the impugned order dated 10.10.2022 (Annexure P-7) passed by the Additional Sessions Judge, Palwal whereby the order dated 29.04.2022 (Annexure P-5) passed by the Sub Divisional Judicial Magistrate, Hathin in case FIR No.332 dated 09.11.2021 (Annexure P-3) under Sections 148, 149, 323 and 506 IPC registered at Police Station Hathin, District Palwal, Haryana has been set aside.

2. The brief facts of the case are that one Rakesh got registered an FIR No.332 dated 09.11.2021 under Sections 148, 149, 323, 325 and 506 at

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respondents No.3 to 5 with the allegations that Rajesh and Sunder (petitioner) had been assaulted. The copy of the FIR is attached to the petition as Annexure P-3.

3. The petitioner, who was injured in the occurrence moved an application dated 27.12.2021 (Annexure P-4) seeking the issuance of directions to the Investigating Officer for conducting his re-medico legal examination and for obtaining of an opinion from the Neuro Surgeon of PGIMS, Rohtak.

4. The said application was allowed vide order dated 29.04.2022 passed by the Sub Divisional Judicial Magistrate, Hathin (Annexure P-5) with the directions that the investigating officer was to get the re-medical examination of the injured-Sunder conducted alongwith obtaining of an opinion from the Department of Neuro Surgery, PGIMS, Rohtak.

5. The private respondents (accused) filed a revision petition against the aforementioned order and vide order dated 10.10.2022 passed by the Additional Sessions Judge, Palwal (Annexure P-7), the order dated 29.04.2022 (Annexure P-5) of the Sub Divisional Judicial Magistrate, Hathin, was set aside. The relevant observation of the Court are as under:-

“9. A perusal of the file of the Learned Trial Court shows that the Investigating Officer had already received opinions from treating doctors of CHC Hathin, SHKM Nalhar and RML Hospital, New Delhi. All the doctors have clearly opined that the injury No.2 suffered by injured Sunder is grievous in nature and is not dangerous to life. There is no ambiguity in the opinion given by the treating doctors and the

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Neuro Surgeon. In these circumstances, there is no further requirement of re-medical for second opinion of any surgeon. The immediate opinion given by the treating doctors including the Neuro-Surgeon of RML Hospital, Delhi, are sufficient for the just decision of the present case”.

6. The aforementioned order dated 10.10.2022 (Annexure P-7) is under challenge in the present petition at the instance of the injured witness-Sunder.

7. The learned counsel for the petitioner contends that the Additional Sessions Judge, Palwal has passed the impugned order on assumptions and presumptions without examining the witnesses and the documentary evidence on record. There was sufficient medical evidence on record to establish that the re-medical examination of the petitioner was essential to know the nature of injuries received by him. In fact, the investigating officer had not sought opinion from any Medical Board as to the nature and severity of injuries upon the person of the injured-Sunder. The medical opinion available on record had been manipulated by the police in collusion with the accused. In fact the injury received by the petitioner was dangerous to life. Even otherwise, no prejudice would be caused to the accused if re-medical examination of the injured-petitioner was conducted. He, thus, prays that the order (Annexure P-7) be quashed and the prayer of the petitioner be allowed in terms of the application (Annexure P-4) and order (Annexure P-5).

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8. The learned counsel for the respondents No.3 to 5, on the other hand, has filed a reply dated 12.04.2023, which is already on record. While advertizing to the reply, he contends that firstly an opinion regarding the nature of injuries on the person of Sunder-petitioner has been taken from the CHC, Hathin, as per which, injuries No.1 and 3 were simple in nature whereas injury No.2 on the person of injured-petitioner Sunder was grievous in nature but not dangerous to life. Similarly, an opinion had also been given by SHKM Govt. Medical College, Nalhar, Nuh (SHKM GMC Hospital, Nalhar). Thereafter, an opinion has been obtained from the Senior Neuro Surgeon Dr. Sandeep of Manohar Lohia, Hospital, New Delhi (RML Hospital). As per his opinion, the nature of injury on the person of the petitioner was grievous. He, therefore, contends that only after obtaining multiple opinions including that of a Senior Neuro Surgeon of RML Hospital, New Delhi did the investigating agency arrive at a finding that the injury on the head of the petitioner was grievous in nature. He, thus, contends that no re-medical examination of the petitioner is required nor is there any requirement for obtaining any opinion from another Surgeon of PGIMS, Rohtak.

9. The learned counsel for the State has filed a status report dated 10/17.05.2023 by way of an affidavit of Ratandeep Bali, HPS, Deputy Superintendent of Police, Hathin, District Palwal on behalf of respondents No.1 and 2, which is already on record. While referring to the said affidavit,

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admitted to SHKM GMC, Nalhar, Nuh on 06.11.2021 and he was found to have suffered G II fracture Distal Phalanx Right Great toe. Similarly, the petitioner was also admitted to SHKM GMC, Nalhar on 06.11.2021 and during his treatment, he was found to have sustained a fracture on the left parietal bone and scalp hematoma. However, during the later part of the day, he was further referred to a higher Centre for Neuro Surgery Opinion and further management. His discharge summary, NCCT report and other investigation reports were obtained from SHKM GMC, Nalhar and the petitioner was taken to Ram Manohar Lohia Hospital, New Delhi where he underwent multiple investigations and treatment. On the basis of the investigations, Dr. Sandeep, Senior Neuro Surgeon has advised “*NO NEUROSURGICAL INTERVENTION REQUIRED*”. Similarly, a medical opinion regarding the nature of injuries of the petitioner was obtained from a Medical Officer who opined that injuries No.1 and 3 were simple and injury No.2 was grievous in nature but not dangerous to life. He, therefore, contends that in view of the categoric opinion of CHC Hathin, SHKM GMC, Nalhar and RML Hospital, New Delhi, no further re-medical examination or opinion of a Neuro Surgeon was required.

10. I have heard the learned counsel for the parties.

11. As per the respective pleadings and the documents including the medical evidence available on record, it is apparent that the petitioner was examined at CHC Hathin, SHKM GMC Nalhar and RML Hospital,

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by the petitioner-Sunder was grievous in nature but not dangerous to life. There is absolutely no ambiguity in the opinion of the doctors and the Neuro Surgeon of RML Hospital, New Delhi. In these circumstances, there is no further requirement of re-medical examination of the petitioner or for obtaining of another opinion of any other Surgeon.

12. In view of the aforementioned discussion, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

May 29, 2023
sukhpreet

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