

CRM-M-6483-2016 (O&M)
Date of Decision: 01.02.2024

...Petitioner

V/S

...Respondents

Mr. Rajesh Lamba, Advocate for respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. Through instant petition, filed under Section 482 of Cr.P.C., the petitioner is seeking quashing of impugned order dated 09.02.2016 passed by learned Judicial Magistrate Ist Class, Gurugram in case titled as **State Vs. Suraj Sharma** arising out of FIR No. 453 dated 30.11.2010 registered under Sections 279, 337, 338, 304-A of Indian Penal Code at Police Station Sadar Gurugram (Annexure P-1) vide which the application of the prosecution/complainant/petitioner herein for permission to lead additional evidence in pursuance to the order dated 18.01.2016 (Annexure P-3) has been dismissed by the trial Court.
2. Learned counsel for the petitioner *inter alia* contends that list of witnesses includes the name of Dr. Sanjay Kumar Mishra (at Sr. No. 13 and 15), who had conducted the Medical Legal Examination of the injured accused Suraj Sharma and deceased father of the petitioner. The petitioner had also cited Dr. Deepak Mathur (at Sr. No. 16), who has conducted the post-mortem of his deceased father. When the case was fixed for defence

evidence, the petitioner came to know that the aforementioned witnesses have not been examined. In order to prove the medical legal reports and post-mortem report approached the concerned jurisdictional Magistrate by filing the application under Section 311 of Cr.P.C. for leading additional evidence. The application filed by the petitioner was allowed by the trial Court subject to costs of Rs. 2,000/- vide order dated 18.01.2016 (Annexure P-3). In spite of granting opportunity to the petitioner to produce the witnesses, these witnesses could not be examined. Thereafter, the petitioner again approached the concerned jurisdictional Magistrate for seeking one more opportunity to examine these two witnesses but vide the impugned order dated 09.02.2016, learned Judicial Magistrate Ist Class, Gurugram, dismissed the application filed by the petitioner. Learned counsel for the petitioner further submits that the testimony of these witnesses is just and essential for the outcome of the trial and in case they are not allowed to depose before the trial Court, it would cause grave prejudice to the petitioner and it would be violative of his right enshrined under Article 21 of Constitution of India with regard to free and fair trial.

3. Per contra, learned counsel for respondent No. 2 submits that the petitioner has been granted sufficient time by the learned trial Court to produce the witnesses and opportunity was granted at the responsibility of the prosecution. Once the witnesses were not produced, the trial Court was left with no option but to dismiss the subsequent application filed under Section 311 of Cr.P.C.

4. Having heard the learned counsel for the parties and after perusing the record of the case, it transpires that the application filed under Section 311 of Cr.P.C. satisfy the essential test for leading additional

CRM-M-6483-2016

evidence that the evidence of the aforesaid witnesses is just and essential for the outcome of the trial.

5. Keeping in view the facts and circumstances of the case, the present petition is allowed. Learned trial Court is directed to grant one effective opportunity to the petitioner/prosecution to produce the witnesses namely Dr. Sanjay Kumar Mishra (mentioned at Sr. No. 13 and 15) and Dr. Deepak Mathur (mentioned at Sr. No. 16), subject to cost of Rs. 5,000/- to be paid by the petitioner to respondent No. 2.
6. The instant petition is according allowed.

01.02.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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