

**CRM-M-26122-2024****1****IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

130

CRM-M-26122-2024
Decided on: 22.05.2024

Harinder Singh

.....Petitioner

Vs.

Dalwinder Kaur

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. P.K. Garg, Advocate
for the petitioner.

ANOOP CHITKARA J.

Aggrieved by the order dated 23.11.2023 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Ludhiana in the aforesaid complaint, dismissing the application of the petitioner filed under Section 311 CrPC, and also the order dated 22.03.2024, vide which, Sessions Judge dismissed the revision petition, petitioner has come up before this Court by filing the present petition under Section 482 CrPC.

2. I have heard counsel for the petitioner to ensure that the matter is worth for issuing notice or not.

3. Petitioner's counsel argued that on 04.01.2018, the accused had caused serious injuries upon the petitioner. After that he had lodged a complaint with the police but instead of registering the FIR, police had only initiated action under Section 107 r/w 151 CrPC. Aggrieved by the non-registration of FIR petitioner had filed a complaint under Section 452, 323, 380, 506, 148, 149 & 120B IPC before the trial Court, Ludhiana on 01.03.2018. After preliminary inquiry, trial Court recorded statement of witnesses evidence and charges were framed and on 13.07.2023, when the petitioner was being examined as CW1, case was adjourned and thereafter on 22.08.2023 he moved an application under Section 311 CrPC for placing on record, the bloodstained clothes including shirt, inner with a request to send the same to FSL for forensic Science Examination with sample DNA.

4. Vide impugned order dated 23.11.2023, trial Court dismissed the application and

**CRM-M-26122-2024****2**

feeling aggrieved the petitioner has come up before this Court under section 482 CrPC.

5. It would be appropriate to refer to the application filed by the petitioner under 311 CrPC (Annexure P-6). In the said application (Annexure P-6), the complainant submits that after alleged incident, blood had oozed out of the injuries and blood was stained on the clothes worn by him and at the time of occurrence when he had lodged report to the police he had also asked to police to take into possession such blood stained clothes but they did not do so. A perusal of the application does not mention that when the petitioner had filed complaint before the trial Court, why did he not attach clothes and also sought for their forensic science examination nor there are averments qua possessing of such cloth and their production at the time of after change evidence. Needless to say that petitioner filed complaint way back on 01.03.2018 and the incident relates to 04.01.2018. Now after a gap of six years, the petitioner wants trial Court to send clothes for testing of the laboratory, which were worn by him at the time of incident on 04.01.2018. If this Court allows such application then it would cause irreversible prejudice to the accused. It is for the reason that there is nothing to demonstrate and justify that these were the same clothes which the complainant was wearing on 04.01.2018. Further the possibility cannot be ruled out that a petitioner can always stain his clothes with his own blood and its scientific techniques are not easily available where even the exact date of blood stain can be counted and the technology is not easily available as of now to find out the date on which blood had oozed out from the body, clotted and stained the clothes. In addition to this, complainant did not offer any explanation that why he did not attach or forward the clothes at the time of filing of complaint and immediately after that, appropriate course for him was to file an application along with complaint requesting the Court to send the clothes for DNA testing. Even if this Court accepts this application at this stage and hypothetically even if the laboratory points that clothes of petitioner have blood stains, still it is impossible to infer that the petitioner was wearing same clothes on 04.01.2018.

6. Perusal of the application shows that the complainant did not mention that immediately after the injuries, he had placed the blood stained clothes in some polythene packet, had sealed and put the date along with date of some other persons or had taken photograph of the packet to demonstrate the same. A perusal of the order passed by the Judicial Magistrate, 1st Class, Ludhiana, reveals that reasons for which he had dismissed the application, was that it lacked any substance for the reason that assertion made in the application were not part of the complaint and Judicial Magistrate

**CRM-M-26122-2024****3**

was absolutely justified that when the petitioner had not mentioned about clothes being blood stained and the fact that he had kept the clothes in safe custody and later on after 05 years & 09 months he had filed an application under Section 311 CrPC, there was no reason to the trial Court to entertain such frivolous application. After that challenging the said order of dismissal, petitioner/complainant had filed criminal revision petition before the Sessions Court, Ludhiana. Perusal of the judgment dated 22.03.2024, passed by the Additional Sessions Judge, Ludhana, also points out that the Court also applied its mind and dismissed the revision petition for the reason that at the time of reading preliminary evidence in support of the complaint, complainant did not produce such evidence nor did he refer to any averment in this regard. In the opinion of the Sessions Court, it was an attempt to file lacuna in this case. Order of rejection passed by the trial Court as well as the judgment passed by the Sessions Court are in accordance with law. Furthermore an independent analysis of the application and the contentions do not list the outcome that it lacks corroboration and suffers strong and massive delay of latches which would cause irreversible prejudice to the accused which cannot be allowed.

7. Given above, petition is dismissed and it is not a case for worth issuing notice. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

22.05.2024
anju rani/jyoti grover

Whether speaking/reasoned: Yes
Whether reportable: No.