

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.28434 of 2019 (O&M)
Date of decision: 07.03.2024

Pawan Kumar

... Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Rakesh Dhiman, Advocate,
for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana,
for respondent No.1.

Mr. Akshay Jindal & Mr. Abhishek Shukla, Advocates
for respondent Nos.2 to 5.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*for short* 'Cr.P.C.') for quashing of impugned order dated 22.05.2019 (P-4), passed by learned Judicial Magistrate 1st Class, Gurugram (for short, 'JMIC'), whereby second application of the petitioner under Section 311 Cr.P.C. was declined.

(2) Contends that it is the mistake of prosecution as name and particulars of concerned Doctor were not properly disclosed and as such, in case the order impugned is not set aside, petitioner is going to suffer on that count. In support of the contention, learned counsel for the petitioner has cited two judicial precedents ("**Mannan Sk. And others** *Versus* **State of**

West Bengal and another”, 2014 (13) SCC 59 & “Rajendra Prasad Versus The Narcotic Cell through its Officer-in-charge, Delhi”, 1999 (6) SCC 110) of Hon’ble the Supreme Court.

(3) On the other hand, learned State counsel in his usual fairness appraised the Court that prosecution availed sufficient opportunities and ultimately, their evidence was closed by learned JMIC vide order dated 14.01.2019 and after recording the statement of accused under Section 313 Cr.P.C., matter was adjourned to 05.02.2019 for recording defence evidence. He also appraised that on 05.09.2019, DW-1 Constable Jatin was examined and now on 06.03.2024, the trial has been adjourned to 13.05.2024 for defence evidence/arguments.

(4) Learned counsel for the respondents No.2 to 5 while opposing the prayer submitted that on earlier occasion also, petitioner filed similar application and which was allowed by learned trial Court on 10.08.2018. He also submitted that prosecution evidence was closed wayback on 14.01.2019 by learned JMIC and now, the case is pending for defence evidence/argument and due to interim stay granted by this Court, respondents are facing the agony of trial for the last about ten years; thus, he submitted that there would be no justification to entertain the second application under Section 311 Cr.P.C at such a belated stage. Learned counsel has also handed over photocopy of application dated 13.06.2018 along with its reply and order dated 10.08.2018 and which are taken on record as Mark ‘X’ Colly. Registry is directed to tag the same at appropriate place.

(5) Heard learned Counsel for the parties and perused the paper-book.

(6) It transpires that FIR No.395 dated 25.09.2014 under Sections 323, 325, 506 & 148 read with Section 149 IPC, Police Station, Badshahpur was registered at the instance of *de facto* complainant-petitioner against Rajesh, Deepak, Subhash and Shamlal (respondents No.2 to 5).

(7) After investigation, report under Section 173 Cr.P.C was presented before the Jurisdictional Magistrate on 29.11.2014 and charges against respondents No.2 to 5 for commission of offence under Sections 323, 325, 506 IPC read with Section 34 IPC, were framed on 17.12.2014, to which they pleaded not guilty and the case was fixed for prosecution evidence on 04.02.2015.

(8) It is evident that on earlier occasion also, petitioner filed an application under Section 311 Cr.P.C for summoning of Dr. Rajesh Raghav on 13.06.2018 and which was allowed by learned JMIC on 10.08.2018 in the following terms:-

“Undisputedly, there is no doctor by name of Rajesh Raghav in the documents annexed however there is a mention of Dr. Rakesh Raghav on the discharge summary. This witness has not been cited as a witness in the challan. No prejudice would be caused at this stage as many other prosecution witnesses are yet to be examined. Therefore, in the interest of justice and in discharge of the wide power contained in section 311 Cr.P.C. Dr. Rakesh Raghav be summoned as a witness for 31.8.2018. Ld. Counsel for the complainant is directed to furnish details of PW Dr. Rakesh Raghav so that summons can be issued to him. Accordingly, application under Section 311 Cr.P.C stands allowed.”

(9) After passing the aforesaid order i.e. 10.08.2018, 03 PWs were examined by the prosecution. Ultimately, on 14.01.2019, learned JMIC

closed the evidence of prosecution and recorded statements of accused under Section 313 Cr.P.C. and posted the matter for 05.02.2019 for defence evidence while observing as under:-

“Today the case was fixed for PWs. No PW is present. Despite availing several effective opportunities including the last opportunity. Further adjournment is not justified. Hence, PWs are closed by Court order.

Statement of accused Subhash, Shyam, Deepak and Rajesh u/S 313 Cr.P.C has been recorded. Now to come upon 05.02.2019 for DWs.”

(10) At this stage, present second application was filed by the petitioner under Section 311 Cr.P.C, which was declined by learned trial Court on 22.05.2019, *inter alia*, observing as under:-

“7. The present application u/s 311 Cr.P.C has been moved second time. The earlier application u/S 311 Cr.P.C was filed on 13.06.2018 for examining doctor Rakesh Raghav as earlier Dr. Rajesh Raghav was being summoned and there was no doctor by name of Dr. Rajesh Raghav. The application was allowed on 10.08.2018 for examining Dr. Rakesh Raghav. Now by way of the present application, the counsel of the complainant wants to examine Dr. Rajesh Raghav. This is a clear departure from the earlier application. Qua, the examination of Dr. Asmita, processes were issued to this witness various times and the same were issued by SHO and DCP (HQ). Despite last and final opportunities, prosecution has failed to examine this witness and, accordingly evidence of the prosecution was closed by Court order on 14.01.2019. Qua witness Amit Kumar and Dr. Naresh Pandit, Ld. Counsel for the applicant had ample opportunity to examine this witness and

the same was also not pleaded in the previous application u/s 311 Cr.P.C whereas the same was within the knowledge of the applicant. Accordingly, there is no reason for summoning of these witnesses at the belated stage when the matter is fixed for defence evidence. Serious prejudice would be caused to the accused if such like applications are being entertained at every juncture. Accordingly, the application stands dismissed.”

(11) This Court has gone through the contents of both the applications and perusal of the same reveal that present application is a complete departure from the earlier application. Apart that, it is a matter of record that prosecution had availed 25 effective opportunities for concluding the evidence and which was closed by the Court order wayback on 14.01.2019. Thus, in such a scenario, if the second application under Section 311 Cr.P.C is allowed, then there would be no end to the Magisterial Trial which is pending for the last 10 years.

(12) There is no quarrel about the proposition of law laid down in ***Mannan and Rajendra Prasad's cases (supra)***, that trial Court has the power to summon any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, but as already discussed, in the present case, factual position is entirely different. The accused are facing the agony of trial before a Magistrate for the last about ten years and this aspect of the matter cannot be ignored all together; hence the judgements cited by learned counsel for the petitioner would not be helpful in any manner.

(13) Consequently, there is no option, except to dismiss the petition.

- (14) Ordered accordingly.
- (15) The above observations may not be construed as an expression of opinion on merits of the present case in any manner.
- (16) In view of the controversy involved, learned JMIC is requested to proceed in the matter expeditiously in accordance with law, if there is no legal impediment.
- (17) Pending application(s), if any, shall also stand disposed off.

7th March, 2024
Gagan/SN

(MAHABIR SINGH SINDHU)
JUDGE

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