

Before Suvir Sehgal, J.

UMESH—Petitioner

versus

STATE OF HARYANA AND ANOTHER—Respondents

CRM-M No.29670 of 2020

February 17, 2021

Code of Criminal procedure, 1908 – S. 482 – Medical re-examination – Medical examination of the victim was done on the same day in a government hospital by a government doctor – Held – No ground made out to falsify the same as forged or fabricated – The petitioner can cross-examine the witness during evidence – Further the present petition challenges the order passed by the Additional Session Judge (ASJ) in a revision petition and hence the present petition tantamounts to second revision which is barred under Section 397(3) CRPC – Petition dismissed – medical re-examination disallowed.

Held that, from the perusal of the documents, it is apparent that the medical examination was conducted by a Government Doctor and the X-ray and opinion had also been obtained from a Government Hospital. At this stage, there is no material before the Court to come to a conclusion that the medical report of the injured, Raju Kaushik is forged or fabricated. Undoubtedly, it will be always open to the petitioner to cross-examine the medical persons when they appear in the witness box during the course of prosecution evidence.

(Para 10)

Further held that, there is yet another aspect of the case as is evident from the record. The Judicial Magistrate 1st Class, Kaithal had passed the order dated 18.08.2020 (Annexure P-10) dismissing the application and revision against the same was rejected by the learned Additional Sessions Judge, Kaithal, vide order dated 09.09.2020 (Annexure P-12). After the dismissal of the same, the petitioner has challenged the said orders through the present petition by invoking Section 482 of the Code of Criminal Procedure. This tantamounts to a second revision petition and the same is specifically barred under Section 397 (3) Cr.P.C. In the garb of invoking powers under Section 482 of the Code of Criminal Procedure, the petitioner cannot be permitted to get an adjudication upon the correctness, legality and propriety of the orders passed by the Courts below.

(Para 11)

Vimal Kumar Gupta, Advocate
for the petitioner.

Rajiv Sidhu, DAG, Haryana.

SUVIR SEHGAL, J. (oral)

(1) The hearing of this petition has been taken up through video conferencing on account of outbreak of COVID-19 Pandemic.

(2) Through the instant petition filed under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of order dated 09.09.2020 (Annexure P-12) passed by the learned Additional Sessions Judge, Kaithal in FIR No.194 dated 12.07.2020, under Sections 323, 34, 354 and 506 IPC, registered at Police Station Kalayat, District Kaithal (Annexure P-4), vide which the revision of the petitioner had been dismissed and order dated 18.08.2020 (Annexure P-10) passed by Judicial Magistrate Ist Class, Kaithal, whereby the application filed by the petitioner for conducting medical re-examination of the injured-complainant, Raju Kaushik, was dismissed.

(3) Facts leading to the filing of the present petition are that FIR (Annexure P-4) was registered on the complaint of Sunita Devi on the allegation that on 11.07.2020 Raju Kaushik physically and verbally abused her. Sunita's son, Umesh, the present petitioner and her husband and one Sanju Rana, reached the spot upon hearing the commotion. Aggressors ran away after threatening the complainant. The motive behind the incident was a dispute over a house. DDR No.34 dated 12.07.2020 was recorded on the complaint of Raju Kaushik, wherein he alleged that Sunita, both her sons Umesh and Amit and her husband, Gyani Ram attacked him with sticks, thapi and gandas. His brother was also injured in the attack and a theft was also committed at his house.

(4) Raju Kaushik was medically examined at Government Hospital, Kalayat. Upon receiving medical opinion, offence under Section 326 was added as the injuries had been described as grievous in nature, which were caused by sharp edged weapon. Petitioner filed an application dated 07.08.2020 (Annexure P-9) for medical re-examination of the complainant on the ground that the X-ray and medical report was false and forged and that the injured had not received any injury with sharp edged weapon. After notice to the State, the application was declined by the trial Court, vide order dated 18.08.2020 (Annexure P-10). Revision filed against there was

dismissed by the learned Additional Sessions Judge, Kaithal on 09.09.2020 (Annexure P-12). Both these orders have been impugned herein.

(5) Counsel for the petitioner has urged that the complaint by injured, Raju Kaushik, is a counter blast to the FIR registered by his mother, Sunita and the same has been done after manipulating the Doctor and getting a medical report in his favour. He contends that the reasoning given in the orders passed by the Courts below are irrational and the order is against the law and facts on the record.

(6) Mr. Rajiv Sidhu, DAG, Haryana has appeared in response to an advance copy of the petition, having been served upon him. He has filed reply by way of affidavit of Deputy Superintendent of Police, Kaithal on behalf of the respondent No.1 and has opposed the petition on the ground that the credibility of the medical reports qua the injured cannot be questioned and by seeking re-examination, the petitioner cannot try to influence the course of investigation.

(7) I have considered the respective submissions of the parties and perused the paper book with able assistance.

(8) The record shows that Raju Kaushik and Sachin were medically examined at Government Hospital, Kalayat. MLR dated 11.07.2020 (Annexure P-7) of Raju Kaushik was prepared, as per which, he had received four injuries, which were described as under:-

- (i) Incised wound of size around 5 x 1 cm x bony deep present over palmar surface of middle finger associated with sharp margins and pointed ends, linear in shape and clotted blood, present over the wound. Advised X- ray of right hand;
- (ii) Incised wound of size around 5 x 1cm x bony deep with sharp margins and pointed ends, linear in shape present over palmar surface of ring finger of right hand. Advised X-ray of right hand;
- (iii) Multiple red contusion of size around 15 x 3cm present over all over the back in various directions; and
- (iv) two parallel red contusion of size around 15 x 4cm present over posterior surface of right thigh.

(9) Injuries No. 1 and 2 were caused by sharp edged weapons, whereas injuries Nos. 3 and 4 were declared to be simple in nature.

Injured, Sachin, had sustained simple injuries. Offences under Sections 148, 149, 323, 324, 452 and 380 IPC were found to have been committed and FIR dated 12.07.2020 (Annexure P-4) was registered against the petitioner and other co-accused. Since this FIR pertained to the incident regarding which FIR already stood registered by the mother of the petitioner, it was treated as a cross-version. The investigating agency got the X-ray report dated 11.07.2020 (Annexure P-7) of the injured, Raju Kaushik, which showed a fracture. An application was moved on 27.07.2020 before the Medical Officer, CHC Kalayat for obtaining his opinion, who opined that the injuries Nos. 1 and 2 were grievous in nature, which had been caused by sharp edged weapon. Thereafter offence under Section 326 IPC was added in the FIR.

(10) From the perusal of the documents, it is apparent that the medical examination was conducted by a Government Doctor and the X-ray and opinion had also been obtained from a Government Hospital. At this stage, there is no material before the Court to come to a conclusion that the medical report of the injured, Raju Kaushik is forged or fabricated. Undoubtedly, it will be always open to the petitioner to cross-examine the medical persons when they appear in the witness box during the course of prosecution evidence. Still further, the petitioner has not been able to give any satisfactory explanation for the delay in seeking re-examination of the injured. The alleged incident took place on 11.07.2020. The injured was examined before the Government Hospital on the same day. The opinion regarding injury being grievous was given on 27.07.2020 and the application seeking re-examination has been moved on 07.08.2020 by which time the injuries sustained by the injured would have substantially healed. For these reasons, this Court is of the opinion that there is no ground for ordering of medical re-examination of the injured.

(11) There is yet another aspect of the case as is evident from the record. The Judicial Magistrate Ist Class, Kaithal had passed the order dated 18.08.2020 (Annexure P-10) dismissing the application and revision against the same was rejected by the learned Additional Sessions Judge, Kaithal, vide order dated 09.09.2020 (Annexure P-12). After the dismissal of the same, the petitioner has challenged the said orders through the present petition by invoking Section 482 of the Code of Criminal Procedure. This tantamount to a second revision petition and the same is specifically barred under Section 397 (3)

Cr.P.C. In the garb of invoking powers under Section 482 of the Code of Criminal Procedure, the petitioner cannot be permitted to get an adjudication upon the correctness, legality and propriety of the orders passed by the Courts below. The present revision petition is, therefore, held to be not maintainable.

(12) In view of the above, this Court does not find any merit in the present petition and the same is ordered to be dismissed.

Payel Mehta