

Court No. - 91

Case :- APPLICATION U/S 482 No. - 9728 of 2012

Applicant :- Harikeksh Nishad

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- P.C. Srivastava, Nitin Chandra Mishra, Sanjeev Kumar Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The applicant has filed this application under Section 482 Cr.P.C. with a prayer to direct the Additional Session Judge, Court No. 3, Gorakhpur to conclude the trial of S.T. No. 32 of 2011 along with Case No. 1293 of 2011 (F.R.No. 1 of 2009), arising out of Case Crime No. 1863A of 2008, pending in the court of Additional Chief Judicial Magistrate, Court No. 12, District Gorakhpur, and not to proceed the aforesaid trial.
3. Submission of learned counsel for the applicant is that there are two cases pending in different courts, which are cross-case of each other. As per settled law in this regard, both the cases should be tried and decided by the same court.
4. Per contra, learned AGA has submitted that to that effect the applicant should move an application before the District and Session Judge for transfer of both the cases in the same court for trial and decision. The application may be heard and decided by the court concern.
5. As per the submission made by learned counsel for the applicant, the S.T. No. 32 of 2011 pending before the Additional Session Judge, Court No. 3, Gorakhpur and with regard to other case relating to Case Crime No. 1863A of 2008 is pending before the court of Additional Chief Judicial Magistrate, Court No. 12, Gorakhpur. It is next submitted that whether the case may be transferred from the court of Additional Chief Judicial Magistrate, Court No. 12, Gorakhpur to the court of Session or not, however, vide order dated 31.03.2011, the Additional Chief Judicial Magistrate, Court No. 12, Gorakhpur, has summoned the accused under Sections 147, 148, 307 IPC.
6. In view of the above, this application is disposed of with a direction to the applicant to move an application before the Chief Judicial Magistrate, Court No. 12, Gorakhpur, for

committal of the case to the court of sessions and thereafter, an application shall be moved before the District and Session Judge for transfer of the case to the effect that as both the cases are cross case of each other, they should be tried and decided by the same court. The learned Sessions Judge, Gorakhpur, will hear the decide the same in accordance with law.

7. Application stands disposed off as above.

Order Date :- 7.11.2023

v.k.updh.