

Reserved.

Court No. - 90

Case :- APPLICATION U/S 482 No. - 21518 of 2023

Applicant :- Aniruddha Singh And Another

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

Counsel for Applicant :- Manvendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants and learned AGA appearing on behalf of opposite party Nos. 1 and 2.

2. The present applicants have invoked the inherent power of this Court under Section 482 CrPC assailing the order dated 25.5.2023 passed by Sessions Judge, Hamirpur in Session Case No. 639 of 2022 (State Vs. Aniruddha Singh and another) arising out of Case Crime No. 183 of 2022, under Sections 171, 384, 419, 420, 467, 468, 484, 307 and 411 IPC, Police Station Kotwali Nagar, District Hamipur, rejecting the application dated 25.5.2023 (paper No. 43Ka) moved on behalf of present applicants (accused).

3. Facts culled out from the averments made in the instant application are that qua incident dated 30.6.2022 two trucks of the present applicants have been seized for allegedly transporting the minerals illegally. Arising out of the said occurrence dated 30.6.2022, three FIRs have been lodged under different sections of IPC, Mines and Minerals Rules as well as the Arms Act. The instant application under Section 482 CrPC is arising out of Case Crime No. 183 of 2022, Session Case No. 639 of 2022 (State Vs. Aniruddha Singh and another). During trial, one Gaurav Chaube, Sub-Inspector has appeared before the court as PW-4. While cross-examining PW-4 in sessions trial No. 639 of 2022 on behalf of the present applicants, a question has been put to him with respect to the ownership of both the trucks which were seized on the date of the occurrence. The question which has been put to PW-4 is quoted hereunder:

“On 30.6.2022 at about 1.10 hours you along with mining

authorities have seized two trucks UP 78 DT 3535 and UP 77 AN 5161 and out of these seized trucks, Abhay Singh is the owner of UP78 DT 3535 and Nirbhay Singh is the owner of UP 77 AN 5161, as mentioned in the FIR?”

(Translation by Court)

4. Learned DGC (Criminal) has raised objection to the aforesaid question on the pretext that witness Gaurav Chaube (PW-4) appeared as the Investigating Officer of the Sessions Case No. 945 of 2022 (State Vs. Anirudh Singh) under Section 3/25 Arms Act and Sessions Case No. 946 of 2022 (State Vs. Nirbhay Singh), under Section 3/25 Arms Act, who has already given his examination-in-chief, therefore, cross-examination could be conducted only relating to those case, however, learned counsel for the accused is putting questions relating to the Sessions Trial No. 639 of 2022 and, therefore, such question cannot be asked from the said witness. Learned trial court has accepted the objection raised by the learned DGC (Criminal) with an observation that the question on behalf of the accused can be asked only with respect to the matter in which Mr. Gaurav Chaube has appeared as Investigating Officer and made examination-in-chief, whereas, the question being asked is related to the Sessions Trial No. 639 of 2022, therefore, such question cannot be asked from the witness (PW 4). Having been aggrieved, an application under Sections 311 CrPC has been moved on behalf of the present applicants on 25.5.2023 (paper No. 43Ka), however, the learned trial court, vide order dated 25.5.2023, has rejected the aforesaid application, which is under challenge in the instant application.

5. Learned counsel for the applicants has submitted that the learned trial court has illegally closed the opportunity of the present applicants to cross-examine Mr. Gaurav Chaube, who is PW-4 in Sessions Trial No. 639 of 2022, and illegally discarded the question put to PW-4 qua ownership of the vehicle. Mr. Gaurav Chaube (SI) was summoned in the Sessions Trial No. 639 of 2022 as PW-4, therefore, the accused has right to cross-examine PW-4 to ensure the fair and just trial, which is their legal right under the Constitution of India. It is further submitted that, while rejecting the application moved by the applicants, learned trial court has illegally ignored the provisions of Section 146 of the Evidence Act, qua cross-examination of the witness, wherein witness can be cross-examined in addition to the questions as referred to under Section 145 of the Evidence Act to test his veracity and discover truth. It is further submitted that PW-4 has appeared before the Court being a witness in Sessions Trial No.

639 of 2022, therefore, opportunity of the present applicants (accused) cannot be curtailed by the trial court to cross-examine the witness to prove their innocence in the occurrence of crime. Negating the question on the ground that the witness is an Investigating Officer in another case is not justified in the eye of law.

6. Per contra, learned AGA has vehemently opposed the submissions as raised by the learned counsel for the applicant and supported the order impugned passed by the learned Sessions Judge. It is contended that Mr. Gaurav Chaube (SI) is an Investigating Officer in Sessions Case No. 945 of 2022 and Sessions Case No. 946 of 2022 wherein he has completed his examination-in-chief, therefore, the accused has no right to put a question to the witness which does not relate to the aforesaid cases. It is further contended that the accused is trying to protract the criminal proceeding on one pretext or another which cannot be permitted in the eye of law.

7. In reply, learned counsel for the applicants has submitted that there is no intention of the present applicants to protract the criminal proceeding inasmuch as charge sheet has been submitted on 23.2.2023 and the charges were framed on 29.9.2022. No efforts have been made till date at the behest of present applicants to protract the litigation. The prosecution is trying to stop the opportunity of the present applicants to get just and fair trial, which is not sustainable in the eye of law.

8. Having considered the rival submissions advanced by the learned counsel for the parties and perusal of record, it is manifested that Gaurav Chaube, Sub-Inspector, Investigating Officer in Sessions Case No. 945 of 2022 and Sessions Case No. 946 of 2022, has been called upon in Sessions Trial No. 639 of 2022 as PW-4. During cross-examination, a question put to him on behalf of the present applicants with respect to ownership of the trucks No. UP 78 DT 3535 and UP 77 AN 5161, which had been shown to be involved in occurrence of crime allegedly took place on 30.6.2022 with an allegation of transporting minerals illegally. Arising out of the same occurrence of crime, other case crime numbers were registered as well relating to the penal provisions under the Mines and Minerals Rules and Arms Act. As per the record, Gaurav Chaube, PW-4 was the Investigating Officer of Sessions Case No. 945 of 2022 and 946 of 2022, under Sections 3/25 Arms Act. A bare perusal of the question as put to PW-4 in Sessions Trial No. 639 of 2022 reveals that it relates qua ownership of the two trucks, which were seized on the date of

occurrence. No question has been asked from the PW-4 relating to the arms for which different case crime numbers have been registered under Section 3/25 of the Arms Act. I failed to understand as to how an accused can be deprived of an opportunity to get just and fair trial to prove his innocence in the alleged crime on the pretext that question put to PW-4 does not relate to cases wherein he appeared as Investigating Officer. Nothing has explicitly been mentioned as to why accused could not put a question to PW-4 related to the Sessions trial No. 639 of 2022 in which he has been called upon as witness. Both the trucks were alleged to have been involved for transporting minerals illegally and, accordingly, they have been seized under the Mines and Mineral Rules and for the remaining offence, as mentioned in the FIR, separate case crime No. 183 of 2022 has been registered. All the cases were arising out of same and common incident dated 30.6.2022 under which the present applicants have been indicted and the vehicles in question have been seized. Learned trial court has tried to give a lame excuse in closing the opportunity of the present applicants to cross-examine the PW-4 on the pretext that the question is not related to the case crime No. 181 of 2022 and case crime No. 182 of 2022, under Section 3/25 Arms Act. It appears that learned trial court has miserably failed to acknowledge that Mr. Gaurav Chaube (SI) has been summoned as PW-4 in Case Crime No. 183 of 2022; therefore, in my opinion, accused has full right to put questions relating to particular case in which witness has been summoned and he has given examination-in-chief in Case Crime No. 183 of 2022 (Sessions Trial No. 639 of 2022). Learned trial court has illegally rejected the application moved on behalf of the present applicants on the pretext of provision as enunciated under Section 145 of the Evidence Act which has been misread and misinterpreted by the court concerned. Apart from that the provisions as enunciated under Section 146 of the Evidence Act are relevant as well for the purpose of cross-examination which gives cross-examiner a wide power of interrogation and denotes that in addition to the questions that may be asked under the law, the witness may be further asked the questions mentioned in Section 146 of the Evidence Act, which permits the putting of questions relating to the trustworthiness of witnesses. Accused can put question to the witnesses to test his veracity, to discover who is he and what is his position in life, or to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture. In the given circumstances of the case question has been asked with respect to the ownership of the

vehicles in question which have been seized by the authorities, having been allegedly involved in the commission of crime. Question relating to the ownership of the vehicle put to Mr. Gaurav Chaube, who appeared as PW-4 in Sessions Trial No. 639 of 2022 cannot be said to be irrelevant or out of context.

9. In this conspectus, as above, in my considered opinion, learned trial court was not justified in closing the opportunity of the present applicants to cross-examine PW-4, who has been summoned in Sessions Trial No. 639 of 2022, which is a legal/constitutional right of the accused to get just and fair trial and to prove their innocence. As such, no useful purpose would be served to keep the instant application pending, therefore, this Court deems it appropriate to finally decide the instant application with a direction for affording opportunity to the present applicant to cross-examine PW-4 in Sessions Trial No. 639 of 2022.

10. Resultantly, instant application is allowed and the order impugned dated 25.5.2023 passed by the learned trial court rejecting the application dated 25.5.2023 is hereby quashed. Learned trial court is directed to recall the witness i.e. PW-4 and fix a particular date to accord an opportunity to the present applicant to cross-examine PW-4. On the said date fixed, cross-examination of PW-4 shall be completed positively on behalf of the accused (applicants herein).

Order Date :- 12.10.2023

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