

Court No. - 90

Case :- APPLICATION U/S 482 No. - 28561 of 2023

Applicant :- Ram Kishan

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Alok Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant and the learned A.G.A.
2. The applicant has invoked the inherent jurisdiction of this Court assailing the order dated 12.06.2023 passed by the Special Judge, POCSO Act, Court No. 2, Moradabad in Session Trial No.656 of 2020 arising out of Case Crime No. 402 of 2020 under Section 376, 504, 506 I.P.C. and 5/6 POCSO Act, P.S. Pakbara, District Moradabad rejecting the application moved on behalf of the present applicant (accused) under Section 311 Cr.P.C.
3. Facts culled out from the averments made in the instant application are that the prosecutrix (opposite party no. 2), showing herself as a minor, has lodged an F.I.R. being Case Crime No. 0402 of 2020 dated 21.05.2020 levelling allegations of rape and criminal intimidation against the present applicant. After due investigation, the Investigating Officer has submitted the charge-sheet arraigning the present applicant under Section 376, 504, 506 I.P.C. and 5/6 POCSO Act. Learned Trial Court vide order dated 10.11.2020 has framed charges. Due to reluctant attitude of the accused (applicant herein) his opportunity to cross-examine PW-1 has been closed on 28.03.2022. At later stage, cross-examination of PW-2 completed and cross-examination PW-3 is still continuing since 03.02.2023. During this period the accused has moved an application dated 30.05.2023 (paper no. 18-B) under Section 311 Cr.P.C. to recall the prosecutrix (PW-1) for the purposes of her cross-examination. The Trial Court, vide order impugned dated 12.06.2023, has rejected the application, which is under challenge before this Court.
4. Learned counsel for the applicant submits that the applicant was throughout in jail and no one was available to do proper pairvi on his behalf, therefore, cross-examination of PW-1 could not be conducted in time on behalf of the accused. Therefore, the

application (paper no. 18-B) has been moved to recall the prosecutrix (PW-1) who could not be cross-examined on behalf of the accused. It is further submitted that for the sake of fair and just trial one opportunity should be afforded to the present applicant to cross-examine PW-1.

5. Per contra, learned A.G.A. has vehemently opposed the submissions advanced by learned counsel for the present applicant and supported the order impugned passed by the trial court. It is contended that perusal of order reveals that the applicant is through out avoiding the court proceedings despite the order dated 08.02.2023 passed by this Court issuing a direction for expeditious disposal of the trial. It is further submitted that there is no abuse of process of the Court, therefore, instant application may be rejected in limine.

6. Having considering the rival submissions advanced by learned counsel for the applicant as well as the learned A.G.A. and perusal of record, it is manifested that opportunity of present applicant to cross-examine PW-1 has been closed on 28.03.2022 on the ground that he has not made any endeavour to cross-examine the PW-1. Perusal of application dated 30.05.2023 (paper no. 18-B) reveals that prosecutrix (PW-1) has been sought to be recalled on the ground that counsel for the accused was not well and, therefore, he could not cross-examine PW-1 which led closure of his opportunity to cross-examine PW-1.

7. While rejecting the application (paper no. 18-B) moved on behalf of the present applicant, learned Trial Court has made an observation that since 28.03.2023 the present applicant has not made any endeavour to move any application intending to cross-examine the PW-1. At a belated stage he has deliberately moved application under Section 311 Cr.P.C. just to protract the litigation, despite the fact that the Hon'ble High Court has already issued direction to conclude the trial within a period of one year. Learned Trial Court has also referred one application dated 06.02.2023 (paper no. 15-B) to the same effect, however, it has not mentioned the final out come of the said application.

8. It is manifested from the record that PW-1 is the main witness of fact who has made allegation against the present applicant (accused) for the occurrence of offence under Section 376, 504 and 506 I.P.C. Perusal of order impugned reveals that at the time of cross-examination of PW-2 an Amicus Curiae has been appointed on the request made on behalf of the accused, however, at later stage the accused has engaged a counsel to contest his case. Prima

facie, it appears that at the initial stage of trial proper pairvi could not be done/conducted on behalf of the accused which shows reluctance at his part. However, to secure the ends of justice, a just and fair opportunity has to be given to the present applicant, as ensured under the Constitution of India, so that the present applicant can properly pursue and defend his case in the court of law. Everyone is equal in the eyes of law, therefore, to get a just and fair trial is constitutional as well as human right of an accused.

9. In this conspectus as above, without going into the merits of the case, it would be appropriate that one opportunity to cross-examine PW-1 shall be accorded to the present applicant.

10. As such, the instant application is **allowed** and the order impugned dated 12.06.2023 passed by the learned trial court is hereby quashed with a direction that the trial court shall recall the PW-1 fixing a particular date and on the said date her cross-examination, on behalf of the present applicant, shall be concluded. In case, for any reason, the same could not be concluded on the said date, it shall continue for the following next working day to conclude the cross-examination. Thereafter, no more opportunity shall be given to the present applicant to cross-examine the PW-1.

Order Date :- 26.10.2023

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