

Court No. - 93

Case :- APPLICATION U/S 482 No. - 30337 of 2023

Applicant :- Mona @ Mohan Sharma

Opposite Party :- State of U.P.

Counsel for Applicant :- Abhishek Mishra

Counsel for Opposite Party :- G.A., Shiv Sharan Tripathi

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Abhishek Mishra, learned counsel for the applicant, Sri Raj Bahadur Verma, learned A.G.A for the State and perused the record.

2. The instant application under Section 482 Cr.P.C. has been filed for quashing the impugned order dated 08.06.2023 passed by the Additional District and Sessions Judge/ POCSO Act, Court No.2, Aligarh in Sessions Judge/ POCSO Act, Court No.2, Aligarh in Sessions Case No.2282 of 2022, arising out of Case Crime No.85 of 2022, under Sections 376, 506 IPC and Section 5/6 of POCSO Act, Police Station Pisawa, District Aligarh.

3. Contention of learned counsel for the applicant is that by the impugned order dated 08.06.2023, the application of the applicant to cross examine the PW 1 was rejected on the ground that on last occasion when PW 1 was examined on 22.02.2023 applicant himself refused to cross the PW 1. It is further contended by counsel for the applicant that the applicant was in jail, therefore, he could not engage any counsel and in absence of his counsel, he could not cross examine the PW 1. After engaging the counsel, the applicant moved an application under Section 311 Cr.P.C. to give him opportunity to cross examine the PW 1.

4. After hearing the learned counsel for the parties, it appears that accused was in jail on 22.02.2023 and he did not have any counsel to argue on his behalf. Immediately after engaging the counsel, he moved an application to permit him to cross examine the PW 1.

5. Hon'ble Apex Court in the cases of **Rajaram Yadav vs State of Bihar and another; (2013) 14 Supreme Court**

Cases 461, Varsha Garg vs State of Madhya Pradesh reported in **2022 LiveLaw SC 662** and **Satyavir Singh vs State of Haryana and others in SLP (Criminal) No.1258 of 2022** decided on 29th August, 2023 observed that cross examine to witness is valuable right of an accused, therefore, opportunity must be given to accused to cross examine the witness.

6. After considering the aforesaid submission and perusal of record, this Court is of the view that the impugned order dated 08.06.2006 passed by Sessions Judge/ POCSO Court, Aligarh is absolutely erroneous and deserves to be quashed. Hence it is, accordingly, **quashed**. The application dated 15.03.2023 under Section 311 Cr.P.C. of the applicant is hereby allowed.

7. It is further directed that on the next date the applicant will be permitted to cross examine the PW 1. It is made clear that no adjournment will be allowed to any of the parties on the next date, except for exceptional reason.

8. With the aforesaid direction, the present application is allowed.

Order Date :- 18.10.2023

A.Kr.