

Court No. - 92

Case :- APPLICATION U/S 482 No. - 32502 of 2023

Applicant :- Mohan Singh

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

Counsel for Applicant :- Rajesh K.S. Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Rajesh K.S. Chaudhary, learned counsel for the applicant and Sri Prem Prakash Tripathi, learned A.G.A. for the State.
2. The instant application has been filed seeking quashing of the order dated 15-04-2023 passed by learned Additional District Judge, Anoopshahr, in S.T. No. 30 of 2020 (New S.T. No. 16261/20) arising out of case crime no. 320/2020, P.S. Anoopshahr, district Bulandshahr, pending in the court of 16-ADJ, Fast Track Court, Court No.1, Bulandshahr whereby the application u/s 311 Cr.P.C. moved on behalf of the applicant for the cross-examination of the PW-3 has been rejected by the learned Additional Sessions Judge, Bulandshahr.
3. Learned counsel for the applicant submits that PW-3 who was 11 years old child witness was examined, then the counsel for the applicant herein moved an application for seeking an adjournment on account of his illness. The learned trial court having noted that two adjournments were already granted to the learned counsel for the applicant for cross-examination, therefore, the trial court proceeded to cross-examine the said witness himself and the cross-examination was concluded. Subsequently the other prosecution witnesses were examined and the trial proceeded. When the matter was fixed for the defence evidence the applicant engaged a new counsel, who on inspection of the record of the case found that no opportunity of cross-examination of witness PW-3 was granted to the applicant herein, therefore, he moved an application under Section 311 Cr.P.C. calling for the witness PW-3 for cross-examination by the learned counsel for the applicant. The said application was considered and was objected by the prosecution and it was submitted that the said application under Section 311 Cr.P.C. is nothing but a dialotry tactics on behalf of the applicant herein as the entire prosecution evidence has already been recorded and after about two years the instant application under Section 311 Cr.P.C. has been filed by the applicant herein seeking cross-examination of the witness.

5. Learned counsel for the applicant has relied upon a judgment of the Apex Court in ***Rafiq and Others vs. Munshilal and others, AIR 1981 SC 1400*** and has submitted that for the default of an advocate the litigant cannot be made to suffer if any default has been committed by the earlier counsel of the applicant, the applicant cannot be deprived of an opportunity to cross examine the said witnesses.

6. From the record of the case it appears that the learned counsel for the applicant was continuously present and he has not moved such application for recalling the witness PW-3 for cross-examination as the cross-examination of said witness was already conducted by the trial court in terms of the provisions of Section 309(2) Cr.P.C., therefore, it appears that the earlier counsel for the applicant has consciously did not choose to cross- examine the said witness by moving an application immediately after his examination and cross-examination by the trial court. It is not the case of the applicant that after 17-09-2021 no counsel has ever appeared on behalf of the applicant rather it appears from the record that after the examination of PW-3 the other witnesses were examined and cross-examined by the counsel for the applicant, therefore, learned counsel for the applicant has sufficient opportunity for recall of PW-3 for further cross-examination immediately after 17-09-2021, however, the same has not been done.

7. The change of counsel by the applicant at the subsequent occasion will not give a right to the applicant to move such application after about two years after the cross-examination of the said witness and even after the conclusion of the prosecution evidence when the matter is fixed for examination of the defence witness, therefore, in the considered opinion of this Court, there is no illegality in the impugned order dated 15-04-2023 passed by learned Additional District Judge, Anoopshahr, therefore, the instant application is devoid of merits and is hereby **dismissed**.

Order Date :- 1.11.2023

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