

Court No. - 89

Case :- APPLICATION U/S 482 No. - 34257 of 2023

Applicant :- Kasim Shah

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

Counsel for Applicant :- Praveen Kumar Pal

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant, learned counsel for the opposite party no. 2 and learned A.G.A for the State.

2. This application under Section 482 Cr.P.C has been filed for quashing the order dated 18.08.2023 passed by Additional District and Sessions Judge Court No. 13/Special Judge (POCSO Act) Kanpur Dehat in Session Case No. 972 of 2023 (State Vs. Kasim) arising out of Case Crime No. 16 of 2023, under Sections 363, 366, 376AB,506 I.P.C and 5M/6 POCSO Act,Police Station Baraur, District Kanpur Dehat.

3. Counsel for the applicant submits that the order impugned dated 18.08.2023 passed by Additional District and Sessions Judge Court No. 13/Special Judge (POCSO) Act Kanpur Dehat is without application of mind. It has been next submitted that on 21.07.2023 chief examination of PW-2 and PW-3 was recorded but due to paucity of time cross examination of PW-2 and PW-3 could not be taken and thereafter, the trial court fixed 24.07.2023 for cross examination of the PW-2 and PW- 3. But on 24.07.2023 lawyers of the trial court were on strike due to which the cross examination of PW-2 and PW-3 was not completed by counsel for the applicant. The trial court closed the cross examination of PW-2 and PW-3. Thereafter, applicant moved an application under Section 311 Cr.P.C before the trial court on 03.08.2023 (Paper No. 18Kha) for cross examination of PW-2 and PW-3 and also made a request before the trial court that the applicant is ready to bear the expenses of the cross examination. But the trial court without considering the submission of the applicant, illegally closed the cross examination of PW-2 and PW-3 and rejected the application under Section 311 Cr.P.C. It is submitted that PW-2 and PW-3 are relevant witnesses and their examination is necessary for just decision of the case.

4. I have considered the argument raised by counsel for the parties and perused the record. Considering the facts and circumstances of the case and without expressing any opinion on the merits of the case, the order dated 18.08.2023 is set aside and the application is finally **disposed of** with direction that trial court shall permit the applicant to cross examine PW-2 and PW-3 after fixing a date which fall within fifteen days on cost of Rs. 3,000/-

Order Date :- 18.10.2023

Saurabh