

Court No. - 89

Case :- APPLICATION U/S 482 No. - 33982 of 2023

Applicant :- Shabir And 2 Others

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

Counsel for Applicant :- Shikhar Tandon

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed by the applicants to quash the impugned order dated 24.08.2023 passed by the learned Sessions Judge, Ghaziabad in Sessions Trial No. 385 of 2017 (State vs. Shabir and others), under Sections 498-A, 304-B, 506 IPC and 3/4 of Dowry Prohibition Act, 1961, arising out of Case Crime No. 219 of 2017, Police Station- Tronica City, District- Ghaziabad, whereby the learned court below has dismissed the application bearing Paper No. 111-Kha, preferred under Section 311 of the Code of Criminal Procedure. A further prayer has been made by the applicants to direct the learned court below to permit the applicants to re-examine PW-10, Smt. Zoya, under Section 311 Cr.P.C.

3. Counsel for the applicants submits that applicants' Application No. 111-Kha preferred under Section 311 Cr.P.C., has been rejected by the Trial Court vide order dated 24.08.2023 on irrelevant consideration, which is liable to be set aside as prosecution produced P.W.10 (sister of the deceased), who was married to brother-in-law of the deceased. He next submits that P.W.10 and deceased were real sisters and married to one of the two real brothers. He next submits that earlier prosecution did not produce eye-witness but after examination of Investigating Officer- P.W.9, prosecution produced P.W.10 as an eye-witness. He next submits that applicants were given opportunity to cross-examine the P.W.10 but applicants could not properly cross-examine the P.W.10 as some relevant questions could not be put before P.W.10, therefore, he moved an application under Section 311 Cr.P.C. narrating all the questions, which are relevant for cross-examination from P.W.10 and also relevant for just and proper decision of the present case. The order dated 24.08.2023 passed by learned Trial Court is illegal and liable to be set aside as fair opportunity of hearing must be given to applicants.

4. Per contra, learned AGA opposes the submissions raised by counsel for the applicants.

5. Considered the submissions advanced by counsel for the applicants and perused the impugned order dated 24.08.2023 passed by the learned Trial Court. From perusal of order dated 24.08.2023, it is apparent that applicants were given two dates to cross-examine the P.W.10 i.e. 16.03.2023 and 24.03.2023. From perusal of order-sheet, it is clear that applicants have not made any attempt to delay the proceedings and on that two dates, they examined the P.W.10 and from the application it is also clear that some relevant questions are required to be cross-examined from the P.W.10. In view of the above, this Court is of the view that one more date should be given to applicants to cross-examine the P.W.10.

6. In the interest of justice, the order dated 24.08.2023 passed by the Trial Court is hereby set-aside with the direction that learned Trial Court shall summon the P.W.10 on 06.12.2023 and on that date applicants shall cross-examine the P.W.10.

7. With the aforesaid observations/directions, this application under Section 482 Cr.P.C. stands **allowed**.

8. It is made clear that if on the aforesaid date fixed, applicants do not cross-examine the P.W.10, learned Trial Court shall proceed in accordance with law.

Order Date :- 23.11.2023

Aditya