

Court No. - 80

Case :- CRIMINAL APPEAL No. - 9215 of 2023

Appellant :- Anand Pratap Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Gaurav Gupta

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the appellant as well as learned A.G.A. and perused the material on record.

This present criminal appeal has been filed with a prayer to allow the present criminal appeal and stay the effect and operation of the order and setting aside the order dated 10.08.2023 passed by learned Special Judge S.C./S.T. Act Court No. 2 Shahjahanpur in Session Trial No. 806 of 2009 (State Vs. Anand Pratap Yadav & others) arising out of Case Crime No. 343 of 2008 u/s 363, 366, 376 I.P.C. and 3(1)12 S.C./S.T. Act, Police Station Kalan, District Shahjahanpur.

It is submitted by learned counsel for the appellant that in this case an application No. 94 Kha was moved by the learned Prosecutor to alter the charge from Section 376 I.P.C. to Section 376 (2) Chh in pursuance to which by order dated 10.08.2023 charge was altered accordingly and case was fixed for statement of the accused persons under Section 313 Cr.P.C. On 21.08.2023 an application under Section 217 Cr.P.C. was moved by the appellant Anand Pratap Yadav before the learned court to give him opportunity of cross-examination with the prosecution witnesses but it is still pending and has not been decided till now whereas under Section 317 Cr.P.C. it is mandatory to give an opportunity of cross-examination to the accused on the altered charge, therefore request to direct the learned court concerned to decide the application dated 21.08.2023 under Section 217 Cr.P.C. while giving an opportunity of cross-examination to the appellant.

Learned A.G.A. has no objection in this regard.

Considering facts and circumstances of the case, submissions made by learned counsel for the appellant as well as learned A.G.A. for the State, perusal of record, it appears that the charge

was altered from Section 376 I.P.C. to 376 (2) Chh by order dated 10.08.2023 and case was fixed on 21.08.2023 for statement of the accused persons under Section 313 Cr.P.C. On that day an application under Section 217 Cr.P.C. was moved by the appellant Anand Pratap Yadav to give him an opportunity of cross-examination with prosecution witnesses on the altered charge but it is still pending. In view of provisions contained under Section 217 Cr.P.C. and the pending application on the part of appellant the learned court concerned is directed to dispose the application dated 21.08.2023 first under Section 217 Cr.P.C. pending before it and then to proceed in the case.

Accordingly, this appeal is, hereby, ***allowed***.

Order Date :- 2.12.2023

Suraj Srivastav