

Court No. - 87

Case :- APPLICATION U/S 482 No. - 9830 of 2014

Applicant :- Rajiv

Opposite Party :- State Of U.P.And 6 Others

Counsel for Applicant :- Mayank Yadav,Vivek Kumar Singh

Counsel for Opposite Party :- Govt.Advocate,Ram Raj
Pandey,Vijay Kumar

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicant, learned AGA and Sri Vijay Kumar, learned counsel for opposite party no. 2.

2. Present application has been filed challenging the order dated 14.03.2014 (wrongly typed as 14.03.2013) by which two applications under Section 391 Cr.P.C. have been rejected.

3. Learned counsel for the applicant submitted that P.W. 7 has given statement against the prosecution, but he has not been declared hostile and not cross examined, therefore, his further cross examination is required. He also submitted that this fact came into the knowledge of applicant that S.I. M.M. Ansari had arrested the persons of applicant's side on 11.05.2009 at 5.10 P.M. from Chhaprauli whereas injured Rajiv (applicant) was in police custody since noon on the same date. Therefore, examination of S.I. M.M. Ansari is necessarily required. Therefore, under such facts of the case, it is required on the part of Court to allow his applications under Section 391 Cr.P.C.

4. Per contra, Sri Vijay Kumar, learned counsel for opposite party no. 2 submitted that so far as P.W. 7 is concerned, he inscribed the FIR in the police station under the instruction of SSP, therefore, there is no occasion for the Court to declare him hostile. He next submitted that S.I. M.M. Ansari is having no concern with the present dispute as he was first informant in some other matter against the applicant under Section 151/107/116 Cr.P.C. Further, neither there is any reference in case diary nor his name find place in the list of witnesses.

5. I have considered the rival submission raised by learned counsel for the parties and perused the record. From the perusal of application as well as judgement, it is apparently clear that P.W. 7

has only inscribed the FIR under the instruction of SSP and he was duly examined and cross examined by the counsels for the parties. Even, otherwise his role was confined to write the FIR and from the perusal of statement, no case is made out to declare him hostile. In fact, he is only a formal witness and his statement is having no bearing over the fate of case. Further, S.I. M.M. Ansari is having no concern with the present dispute as neither his name find place in the list of witnesses nor there is any reference in the case diary and only to linger on the proceeding, application has been filed, which is rightly rejected by the Appellate Court with specific finding that he has no concern with the present dispute.

6. Accordingly, application lacks merit and is **dismissed**. No order as to costs.

Order Date :- 7.11.2023

Arvind