

Court No. - 78

Case :- APPLICATION U/S 482 No. - 37100 of 2023

Applicant :- Shyam Bihari Gautam

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

Counsel for Applicant :- Sunil Vashisth, Santosh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the applicant and learned A. G. A. for the state.

2. This application has been filed under Section 482 Cr.P.C. against the order dated 25.8.2023 passed by Special Judge, Prevention of Corruption (V. B. U. P. S. E. B.) / Additional Sessions Judge, Meerut in C. C. No. 20 of 2001; State Versus Shyam Bihari Gautam, arising out of Case Crime No. 224 of 2001, P. S.-Jamunapar, district-Mathura, under Sections-7/13 (1) read with 13 (2) of Prevention of Corruption Act, 1988, whereby the application filed on behalf of the applicant/accused under Section 233 (3) and 294 (3) Cr. P. C. has been rejected.

3. Learned counsel submitted that the impugned order is against the facts and law and liable to be set aside. Applicant is accused in the aforesaid case. As per prosecution version, before the alleged incident of trap, Constable Subhash Babu and Ravindra Singh were also joined in the trap team but it appears that their signatures shown on the recovery memo, were not made by those Constables and in fact, their forged signatures have been shown on the recovery memo and the sanctity of the recovery memo is seriously doubtful and thus, it was necessary that the said Constable namely, Subhash Babu and Ravindra Singh, must be summoned by the trial

Court and by taking their specimen signatures, the same be got matched with the signatures shown on the recovery memo.

4. Referring to the facts of the matter, learned counsel submitted that examination of signatures shown on the recovery memo with the specimen signatures of the constable Subhash Babu and Ravindra Singh from FSL, is quite desirable but the trial Court has rejected the application arbitrarily. In this connection, learned counsel has also referred the provisions of Section-67 of the Indian Evidence Act and submitted that the impugned order is against the facts and law and thus, liable to be set aside.

5. Learned A. .G. A. submitted that the said Constable, namely, Subhash Babu and Ravindra Singh, have not been examined during prosecution evidence and there is absolutely nothing to show that their signatures shown on the recovery memo were not made by them. The accused/applicant has opportunity to summon those witnesses in defence evidence and if deny their signatures, the trial Court may consider the matter accordingly. The case relates to the year, 2001 and that the said application has been moved on behalf of the applicant with the intention to delay the trial. It was submitted that at this stage no such direction can be made by the trial Court, as sought by the applicant, as the same would amount to opening of Investigation. It was also submitted that there is no illegality or perversity in the impugned order.

6. I have considered rival submissions and perused record.

7. Perusal of record shows that as per prosecution version, the applicant, who was working as Lekhpal, was making demand of illegal gratification of Rs. 2500/- for appearing in his case as witness and he was apprehended by a trap team, while he has

accepted an illegal gratification of Rs. 2500/- from the de-facto complainant. It was stated that while a trap team was constituted by Anti Corruption Establishment, two constables, namely, Subhash Babu and Ravindra Singh, were also joined in the trap team from the concerned police station before conducting raid. During trial, said Constables Subhash Babu and Ravindra Singh were not examined as prosecution witnesses. The applicant has moved an application under Sections 233 (3) and 294 (3) Cr. P. C. by alleging that the signatures of constable Subhash Babu and Ravindra Singh shown on the recovery memo, were not made by them and in fact, their forged signatures have been shown on the recovery memo and thus, said constables be summoned to the Court and their specimen signatures be taken and the same be sent to the handwriting expert for comparing the same with the signatures shown on the recovery memo. That application has been rejected by the trial Court vide impugned order dated 25.8.2023. It appears that the said application is based on surmises and conjectures. There is no material to show that the signatures of Subhash Babu and Ravindra Singh shown on the recovery memo, are forged one. As stated above, the said constables have not been examined as prosecution witnesses.

8. In view of these facts and circumstances, there was no necessity for summoning the said constables to obtain their specimen signatures and sending the same to the hand writing expert. However, the applicant/accused is free to get summoned the said constables as defence witnesses, in defence evidence, and if they deny their signatures on the recovery memo, Court may consider the effect of the same in accordance with law.

9. Considering all relevant facts of the matter, it cannot be said that

the impugned order is suffering from any such material illegality or perversity so as to require any interference by this Court by invoking inherent powers under section 482 Cr. P. C. It is well settled that inherent powers under section 482 Cr.P.C. have to be exercised to prevent abuse of process of Court or to secure the ends of justice. In the instant matter no such case is made out. The instant application under Section 482 Cr. P. C. lacks merit and is liable to be dismissed.

10. Accordingly, this application under Section 482 Cr. P. C. is hereby dismissed.

Order Date :- 8.11.2023
HR