

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38478 of 2023

Applicant :- Jasveer

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Shashi Kumar Mishra, Akshay Kumar Shukla, Ravindra Pal Singh Kashyap

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. This application u/s 482 Cr.P.C. has been filed by the applicant with the prayer to quash the order dated 03.06.2023 to the extent by which the Trial court declined to recall PW-1 and PW-2 under Section 311 Cr.P.C. for further cross examination on certain points as mentioned in the application no. 33-B moved under Section 311 Cr.P.C. in S.T. No.85 of 2019, arising out of Case Crime No.616 of 2019, under Sections 363, 376, 506 IPC and Section 7/8 of POCSO Act, P.S. Baghpat, District Baghpat.
3. Learned counsel for the applicant submits that during the course of trial, an application was moved by the accused under Section 311 Cr.P.C. with the averment that previous counsel missed some important questions, which could not be put to PW-1, PW-2 & PW-5, which are necessary for the just decision of the case. Further submission is that the learned Additional Sessions Judge without taking note of the questions to be put to the witnesses has partly allowed and partly dismissed the application, only PW-5, the Investigating Officer was allowed

to be re-examined and prayer for re-examination of PW-1 and PW-2 (Prosecutrix) was refused. Further submission is that the manner in which the proceeding has been carried out is nothing but an abuse of process of Court, which is liable to be quashed.

4. On the other hand, learned AGA has opposed the prayer and submitted that the purpose of section 311 Cr.P.C. is not fulfilled the lacuna created in the case. The order has been passed rightly. There is not illegality or impropriety in the impugned order.

5. I have considered the rival submission made by the learned counsel for the parties and perused the record of the case.

6. Section 311 Cr.P.C. is quoted as under:-

"Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

The Court reiterated the established position of law that Section 311, (Power to summon material witness, or examine person present) of the Code of Criminal Procedure, 1973 (CrPC), should be invoked only for the ends of justice and it should be exercised with caution and circumspection."

7. Keeping in view the submission and contention made by the learned counsel for the parties and from the perusal of the record and specifically the impugned order, it is apparent that the ample opportunity has been given to the accused for cross examining the PW-1 & PW2. The order is detailed one, in which, it has been given a detailed description of the deposition of the witnesses and the opportunity given to the accused as

learned Additional Sessions Judge found that the applicant should be given opportunity to re-examine the PW-5 as the opportunity has been closed without reason, he allowed the application partly. There is no illegality or impropriety in the impugned order. Hence the prayer made in the application is refused.

8. With the aforesaid observations, the present application u/s 482 Cr.P.C. is **dismissed**.

Order Date :- 23.11.2023
Sanjeet