

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38894 of 2023

Applicant :- Smt. Geeta Shastri

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

Counsel for Applicant :- Vikas Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

Instant application under Section 482 Cr.P.C has been filed for quashing of the impugned order dated 27.09.2023 passed by Additional Session Judge (FTC-offence against Women), Jhansi in ST No.251 of 2018 (State Vs. Purshottam Shastri and others), arising out of Case Crime No.286 of 2018, under Sections 498A, 304B, 323 IPC and 3/4 of D.P. Act, PS- Babina, District- Jhansi.

Brief facts of the case are that the opposite party no.2 lodged the FIR under aforesaid sections against the applicant. Learned counsel for the applicant submits that during the trial the applicant moved an application under Section 91 Cr.P.C., which was allowed partly directing the Examination Controller/Registrar of the Bundelkhand University for not to destroy the copies/documents and observed that it is not a stage of producing the defence evidence from the defence side by order dated 12.3.2021.

Learned counsel for the applicant next submits that after closing of prosecution witness, the applicant moved an application under Section 91 Cr.P.C., as Paper No.149A that summon the copy of B.ed examination, which was kept by order dated 12.3.2021, but trial court by order dated 27.9.2023 rejected the application of the applicant observing that defence examination has been closed and statement of the defence has been recorded under Section 313 Cr.P.C. The application of the defence at this stage, now moved to delay the proceedings.

Learned A.G.A. has opposed the arguments raised by learned counsel for the applicant.

This Court has perused the entire records.

On perusal of the orders passed on 12.3.2021 as well as 27.9.2023, it is apparent that by order dated 12.3.2021 the court has issued direction to the Bundelkhand University to keep the one copy as sample for tallying the handwriting but by order dated 27.9.2023, trial court has not considered the earlier order which has been passed to keep one copy for sample for tallying the handwriting of the deceased. The trial court must summon the copy as same was kept before the aforesaid university. Not giving opportunity would amount to deprive the applicant to produce evidence in his defence. The applicant's son is in jail, the finding of the trial that application has been moved to delay the proceeding is perverse and for purposes of fair trial, opportunity to defence must be given.

In view of the above, the order dated 27.9.2023 is set aside with direction to the trial court to consider the application afresh and decide the same within a period of one month, in view of the observations made here-in-above and order passed on 12.3.2021.

Accordingly, the application is **allowed**.

Order Date :- 19.10.2023

Pravesh Mishra