

Court No. - 89

Case :- APPLICATION U/S 482 No. - 39255 of 2023

Applicant :- Rajveer Singh Shakya And Another

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

Counsel for Applicant :- Anurag Shukla, Niharika Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicants, learned AGA for the State and perused the record.
2. This application under section 482 Cr.P.C has been filed by the applicants to quash the order dated 2.09.2023 passed by Special Judge SC/ST Act (P.A.) Additional Session Judge, Court No.2, Etawah in Session Trial No.766 of 2021 (State Vs. Raghvendra and others) arising out of Case Crime No. 88 of 2021, under sections 302, 147, 148, 149, 323, 504, 506, 307 IPC and Section 3(2)(5) SC/ST Act, Police Station Saifai, District Etawah, pending in the Court of Special Judge SC/ST Act (P.A.)/Additional Session Judge, Court No.2, Etawah and direct the learned trial court to examine the applicants as eye witnesses shown in the charge sheet.
3. The facts of the case are that on 17.05.2021, a first information report was registered, under section 307 IPC and 3(2)(5) of SC/ST Act in Case Crime No.88 of 2021. Thereafter, after some time injured died and case was converted under section 302 IPC. The Investigating Officer after collecting evidence on record on the basis of the statements of the witnesses submitted charge-sheet dated 31.07.2021 against 11 accused persons, under sections 147, 148, 149, 323, 504, 506, 307, 302 IPC and 3(2)(5) SC/ST Act. Thereafter, charge-sheet was framed and PW-1 Vijay Pal was

examined and cross-examined. The name of the present applicants are shown at serial Nos. 5 and 7 in the list of eye witnesses in the charge-sheet.

4. Learned counsel for the applicants next averred that after examination of PW-1, Vijay Pal, defence counsel moved an application 56 Kha on 7.02.2023 that PW-1 be summoned for re-examination, as earlier counsel did not examine the PW-1. The trial court allowed the application of the applicants and granted permission to defence for cross-examination of PW-1. In cross-examination, the PW-1 has changed his version and it appears he has collided with accused persons.

5. Learned counsel for the applicants submits that the applicants here are witnesses of the case and have challenged the impugned order on the ground that applicants are affected party in this case as who had been beaten by the accused person in the incident and moved an application 73 Kha with prayer that application be allowed and the applicants be permitted to give evidence as prosecution witnesses. The accused persons are making pressure upon the applicants to make a statement in their favour. Prosecution has moved application 74 Kha that witnesses Lalu Prasad, Avnish, Rajveer Singh and Navin Kumar be discharged as they have collided with accused persons. The learned trial court decided both the applications by the impugned order dated 2.09.2023.

6. He next submitted that the order passed by the learned Magistrate rejecting the application of the applicants for irrelevant consideration without considering the matter of facts of the case. As applicants are witnesses of the case and they must be given opportunity to produce evidence before the Court for just decision

of the case. The order passed by the trial court is illegal and abuse of process of Court.

7. Learned AGA vehemently opposed the submissions raised by the learned counsel for the applicants and stated that the applicants who have challenged the impugned order having no right to challenge the order as well as applicants/witnesses can not move an application to record his statement as prosecution witness. Applicant Nos.1 and 2 are prosecution witnesses in the charge-sheet and prosecution moved application that applicants are won over by the accused and as such do not want to produce the applicant as prosecution witness. The prosecution is not interested to produce them as prosecution witnesses. Applicants cannot pressurize the prosecution.

8. Considering the submissions made by the learned counsel for the applicants and perused the entire record. From the record, it is apparent that the applicants are witnesses of the case in the charge-sheet and the prosecution does not want to produce him as witness as prosecution found that applicants have colluded with accused persons. More over, it is the discretion of prosecution to produce the witnesses, no witness can compel the prosecution to produce themselves as witnesses of the case.

9. On perusal of the order passed by the learned trial court and finding it is clear that the prosecution witnesses are relatives of the accused persons and chances of collusion with the accused persons cannot be denied. He has rightly rejected the application of the applicants, and discharged the prosecution witnesses Lalu Prasad, Avnish, Rajveer Singh and Navin Kumar as prosecution witnesses. The order passed by the learned trial court is just and proper, does not require any interference by this Court.

10. In view thereof, the application is **rejected**.

Order Date :- 27.10.2023

SFH