

Court No. - 93

Case :- APPLICATION U/S 482 No. - 40655 of 2023

Applicant :- Deepank @ Nishu And 5 Others

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

Counsel for Applicant :- Anmol Kumar

Dubey, Ishwar Chandra Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

Applicants being accused in Sessions Trial No. 191 of 2018, titled *State Vs. Paramjit and others*, arising out of Case Crime No. 399 of 2017, under Sections 147, 148, 149, 307, 302, 34, 504 I.P.C., Police Station Didoli, District Amroha are aggrieved against the impugned order dated 28.8.2023 passed by Additional Sessions Judge/ Special Judge (POCSO Act), Court No.3, Amroha, whereby their application moved under Section 311 Code of Criminal Procedure seeking recall of witness namely, Dharam Singh (P.W.-1) for cross-examination has been dismissed.

Learned counsel for applicants submits that applicants, who are six in number are facing prosecution in the above mentioned case, and during the course of the trial, the prosecution examined their first witness namely, Dharam Singh (P.W.-1) on 17.2.2023 and on the said date, the cross-examination of the said witness was deferred on the request of the defence counsel representing the accused-applicants. He submits that thereafter, the

matter was fixed for 2.3.2023 and on the said date, the case was adjourned on the written application moved by the complainant and the case was adjourned to 18.3.2023.

Learned counsel for applicants while referring to the orders has pointed out that on 18.3.2023 the trial court refused to adjourn the case on the request of the accused for cross-examination of Dharam Singh (P.W.-1) and proceeded to close their right to cross-examine the said witness. He submits that thereafter the accused-applicants filed an application under Section 311 Cr.P.C. with an undertaking that if, one opportunity is granted to the accused, they would conclude the cross-examination of PW.-1, but their request has been declined through the impugned order dated 28.8.2023. According to the learned counsel, trial court has shown undue haste in proceeding with the trial and in all there are eight witnesses and if, one opportunity is granted to the accused-applicants to cross-examine the said witness, no prejudice would be suffered by the complainant or the prosecution. He prays that the impugned order dated 28.8.2023 be set aside.

Learned A.G.A. while opposing the prayer has argued that sufficient opportunities were extended to the accused to cross-examine the Dharam Singh (P.W.-1), but they failed to exercise their right and kept on seeking adjournments, therefore, under these compelling circumstances, the Court has rightly

declined their request. Learned A.G.A. further submits that impugned order dated 28.8.2023 under challenge has been passed correctly and the same does not call for any interference.

After hearing the learned counsel for the parties and considering their submissions, this Court finds that trial is at the initial stage as only one witness has been examined by the prosecution, out of total eight witnesses. It is not a case where the adjournments have been sought consistently by the defence counsel as on 2.3.2023 the case was adjourned on the request of the complainant's counsel. Further, a perusal of the order dated 17.2.2023 would show that the prosecution had moved an application for clubbing three trials, pending separately arising from the same Case Crime No. 399 of 2017 and the said application is yet to be adjudicated. In the first trial bearing Sessions Trial No. 191 of 2018, there are only six accused and the remaining accused are in the other two trials, which are yet to be clubbed with the first trial and the witnesses are yet to be examined in the other connected trials, therefore, facts and circumstances of the case would show that the order dated 18.3.2023 resulted in serious prejudice to the accused, because if, this order is allowed to sustain, the testimony of P.W.-1 would go unimpeached. The trial court has also failed to take note of the stand of the accused-applicants that if, they are allowed one opportunity to complete the cross-examination of

P.W.-1, it would not result in any prejudice to the complainant and erroneously proceeded to dismiss their application under Section 311 Cr.P.C. also. In the impugned order dated 28.8.2023, the trial court has blamed the accused persons for seeking adjournments consistently, whereas on 2.3.2023 all the accused with their defence counsel were present and the adjournment was requested on behalf of the complainant.

Thus, in view of the above discussion, this Court finds it to be a fit case for exercise of inherent powers under Section 482 Cr.P.C. Consequently, the impugned order dated 28.8.2023 is set aside and the application filed by the accused-applicants under Section 311 Cr.P.C. is allowed.

Further, it is directed that the trial court shall recall the witness namely, Dharam Pal (P.W.-1) either on the date fixed in the trial or may fix any other date for completion of his cross-examination by the applicants.

The application is accordingly, allowed.

Order Date :- 30.11.2023
P.S.Parihar