

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 11523 of 2023

Petitioner :- Arun Kumar Yadav And 2 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Santosh Kr. Singh Paliwal

Counsel for Respondent :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Heard learned counsel for the petitioners, learned AGA for the State and perused the material placed on record.

Instant writ petition has been filed by the petitioners for setting aside the order dated 13.10.2023, passed by the Additional Sessions Judge, Court No.3, Mau, whereby the application dated 13.10.2023 filed under Section 311 Cr.P.C. has been rejected by the court below on the ground that said witness appeared on 31.9.2023 for cross-examination as his Examination-in-Chief and part cross-examination was conducted on 5.7.2019. He appeared after four years. He is a public servant. However, none appeared on behalf of the accused for his cross-examination. Frequent summoning of State Doctor incurs loss of public money. Section 309 Cr.P.C. provides that the trial be concluded as early as possible and the evidence of witness be recorded on his presence. Learned trial court has cited several judgements of Hon'ble Apex Court and dismissed the application filed under Section 311 Cr.P.C. and fixed the case for remaining evidence.

Learned counsel for the petitioners submitted that from perusal of ordersheet of the Court below, it appears that Dr.R.R. Chauhan appeared before the Court on 21.9.2023 but due to ongoing agitation of advocates in the State pursuant to Hapur Protest and condolence resolution moved by the local Bar Association on account of death of a family member of an advocate, the cross-examination of Dr. R.R. Chauhan could not be conducted by the accused.

Keeping in view the limited question involved in the matter, this Court does not find it necessary to summon respondent No.2, first informant and disposing of the same after hearing learned counsel for the petitioners and learned AGA for the State.

This is admitted fact that Examination-in-Chief and partial cross-examination of said medical witness was done on 5.7.2019 and thereafter issuance of number of processes, he appeared before the Court for cross-examination on 4.2.2023 and 21.9.2023, after a gap of four years. However, accused side failed to proceed with the cross examination of the said medical witness and the trial court was compelled to close the cross-examination of said witness on default of the accused side. Although, the ground taken for non appearance of learned counsel for the accused to cross-examine the said witness is not legally tenable, however, this fact can not be denied that cross-examination of said witness is material for just disposal of this case and one opportunity of cross-examination of said medical witness is liable to be given to accused side, subject to imposition of sufficient cost on accused petitioner.

Section 311 Cr.P.C. provides as under:-

"311. Power to summon material witness, or examine person present. 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."

In the light of foregoing discussion and aforesaid statutory provision, the present writ petition stands **allowed** and the impugned order dated 13.10.2023 passed in S.T. No.227 of 2008 by Additional Session Judge, Court No.3, Mau, whereby the application under Section 311 Cr.P.C. has been dismissed is set aside.

Learned trial court is directed to re-call PW-5, Dr. R.R. Chauhan for his cross-examination on deposit of appropriate cost and travel expenses of said medical witness borne and deposited by the accused, prior to summoning of the said witness. However, it is made clear that no further opportunity of cross-examination will be given to accused on any ground whatsoever in case of appearance of said Doctor pursuance to present order.

Order Date :- 9.11.2023

Kamarjahan