

Court No. - 93

Case :- APPLICATION U/S 482 No. - 42350 of 2023

Applicant :- Istkhar And 7 Others

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

Counsel for Applicant :- Arun Kumar Singh, Ashok Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

Petitioners (accused) are aggrieved against the order dated 3.10.2023 passed by Additional Sessions Judge/ Special Judge SC/ST Act, Baghpat in Sessions Trial No. 197 of 2020, whereby their application seeking recall of witnesses P.W.-1 and P.W.-2 moved through application under Section 311 Code of Criminal Procedure has been dismissed.

Learned counsel for applicants submits that the applicants being accused had been subjected to prejudice as they were not represented by any validly appointed counsel before the trial court, therefore, the necessity arose to move the application seeking recall of witnesses P.W.-1 and P.W.-2, who were never cross-examined on behalf of applicants. He submits that though, when the testimony of these witnesses was recorded Sri K.P. Singh and Sri Ramawtar Mittal advocates represented the applicants, but on record they were never engaged by the applicants. He submits that the application was moved on 2.9.2022, which was allowed initially vide order dated 16.5.2023, but the said decision was challenged before this Court by the complainant and after setting aside the decision, the matter was remanded back before the trial court for deciding it afresh.

Learned counsel for applicants has drawn the attention of the Court to the impugned order dated 3.10.2023 to submit that the trial court has erroneously dismissed the application, and if, the witnesses are recalled for cross-examination, no prejudice would be suffered by the prosecution. He prays that the impugned order dated 3.10.2023 be set aside and the application filed by the applicants under Section 311 Cr.P.C. be allowed.

During the course of hearing, it is not disputed by learned counsel that in all there are 35 accused in this trial and except for P.W.-1 and P.W.-2, the remaining witnesses were cross-examined by the defence counsel engaged by them on 15.7.2022. When learned counsel was asked to produce the power of attorney on behalf of the accused, he has feigned ignorance about the power of attorney executed by the applicants in favour of Sri K.P. Singh and Sri Ramawatar Mittal.

At this stage, Sri Shubham Pandey, Advocate and Sri Ram Raj Pandey, Advocate have filed their Vakalatnama on behalf of opposite party no.2, the same is taken on record.

After hearing the learned counsel for applicants and considering his submissions, this Court finds that the application under Section 311 Cr.P.C. was moved by the applicants on 2.9.2022 and much before that, the prosecution had closed its evidence in May, 2022. The sole ground raised to press his claim for recalling the witnesses does not appeal to prudence as after committal of the case, the accused were charge sheeted, and if, they were not represented by any counsel, they could raise this ground at that very initial stage, when they pleaded not guilty and claimed trial. By now, it is settled law that mere change of counsel cannot be a ground for recalling the witness as many a times, this provision is invoked to cause damage to prosecution case, which has already

discharged the onus as the possibility of turning the prosecution witness hostile after recalling under Section 311 Cr.P.C. cannot be ruled out. A perusal of the impugned order dated 3.10.2023 shows that the trial court has carefully examined the material on record and the impugned order does not suffer from any illegality or impropriety, therefore, no interference is warranted by this Court

Accordingly, the application is dismissed.

Order Date :- 20.11.2023

P.S.Parihar