

**Court No. - 89**

**Case :-** APPLICATION U/S 482 No. - 43224 of 2023

**Applicant :-** Ravindra

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

**Counsel for Applicant :-** Shamsheer Singh

**Counsel for Opposite Party :-** G.A.

**Hon'ble Deepak Verma,J.**

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the impugned order dated 20.10.2023 passed by learned Additional Sessions Judge/ Fast Track Court-1, Baghpat in Sessions Trial No. 507 of 2018 (State vs. Tejpal and others), arising out of Case Crime No. 337 of 2018, under Sections 498A, 304B I.P.C. & Section 3/4 of Dowry Prohibition Act, Police Station- Chhaprauli, District- Baghpat and further to direct the learned Trial Court to summon the defence witness as per Section 233 Cr.P.C.
3. Brief facts of the case are that opposite party no. 2 lodged first information report which was registered as Case Crime No. 337 of 2018, under Sections 498-A, 304-B IPC & 3/4 of Dowry Prohibition Act, alleging therein that daughter of opposite party no. 2 marriage was solemnized with the applicant no. 20.02.2015 with hindu rituals. Applicant was demanding dowry since the date of marriage and committed marpeet and opposite party no. 2 lodged first information report against four persons for committing murder of his daughter.
4. Counsel for the applicant submits that the applicant has challenged the order dated 20.10.2023 by which the Additional Sessions Judge/ Fast Track Court-1, Baghpat has rejected the application of the applicant by which applicant sought summoning of six witnesses named in his application. He next submits that In-charge Inspector, Vijay Kumar Singh is the main witness and in his statement recorded during investigation has stated that he received information on 13.08.2018 through a phone call that sister of the caller has been murdered. Thereafter, he got information that marriage of the deceased was done within seven years and when he reached on the spot one lady, who is said to be the sister-in-law of the deceased reached there. He next submits that order passed by the learned Additional Sessions Judge/ Fast Track Court-1, Baghpat is illegal and arbitrary in manner and liable to be set aside. Counsel for the applicant has also placed reliance upon the judgment passed by this Court in case of **Mukesh Sharma Vs. State of U.P. and Another** reported in **2019 0 Supreme(All) 850**; wherein in paragraph no. 9, this Court has held as under:-

*"9. Before dealing with the reasoning given by the trial judge for rejecting the applications of the applicant for leading defence evidence, it is to be understood as to what is the scope of Section 233 (3) Cr.P.C. A bare reading of sub-section (3) of Section 233 Cr.P.C. would reveal that if the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Moreover, the court is required to record its reasoning for refusing the request to summon a defence witness. A bare perusal of the Section 233(3) Cr.P.C. would reveal that except on those grounds the request cannot be turned down on any ground. It is also well settled that the trial court cannot deny an accused the right to summon witnesses, he /she has cited to examine them as defence witnesses which is his sacrosanct fundamental right. "*

5. Per contra, learned A.G.A. opposes the submissions raised by counsel for the applicant.

6. Considered the submissions raised by counsel for the parties and perused the entire record.

7. From perusal of record, it is apparent that applicant wanted to produce prosecution witness as D.W.1. From the record, it is also clear that In-charge Inspector, Vijay Kumar Singh, to whom applicant wants to summon as defense witness, his name is present in the case diary and in the charge sheet his name appeared at serial no. 25 as prosecution witness. On the application of prosecution, D.W.1, In-charge Inspector, Vijay Kumar Singh was discharged from the evidence. Now, the applicant accused wants to produce the prosecution witness as defense witness. Applicant in his application to summon the witnesses has not given reason and cause for examination of the prosecution witnesses. Merely submitted that as per statement where it is submitted that In-charge, Vijay Kumar Singh, met with deceased sister-in-law.

8. On perusal of record, it further appears that High Court vide order dated 23.03.2023 directed the court below to expedite the matter, thereafter, examination of prosecution witnesses were closed vide order dated 07.07.2023, thereafter, examination of defense witness was started and three dates were fixed for statement of the defense witnesses but applicant accused has not produced any defense witness. Under Section 233 Cr.P.C., the accused can enter upon defense and he can apply for the issue of any process for compelling the attendance of any witness in his defense. The provisions of sub-Section 3 of Section 233 Cr.P.C. cannot be understood as compelling attendance of any prosecution witness examined, cross-examined and discharged to be juxtaposed as defense witness.

9. In the opinion of this Court, the prosecution witness which has been discharged for evidence by the prosecution may not be produced as defense witness. The Hon'ble Apex Court in its judgment passed in the case of **State of M.P. Vs. Badri Yadav and Another reported 2006 (3) SCC (Crl) 337** has held that accused

application for compelling attendance of any prosecution witness, who had been examined, cross-examined and discharged to be juxtaposed as defense witness, is not maintainable. Reliance placed by counsel for the applicant is not applicable in the present case as facts of that case are entirely different from the case in hand.

10. In view of the above observations, this Court is not inclined to interfere in the order dated 20.10.2023 passed by learned Additional Sessions Judge/ Fast Track Court-1, Baghpat.

11. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

**Order Date :- 11.12.2023**

Aditya