

Court No. - 92

Case :- APPLICATION U/S 482 No. - 43360 of 2023

Applicant :- M/S Deewan Chand Engineer

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Vikas Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Tej Pal Singh Kant, learned counsel assisted by Shri Vikas Sharma for the applicant and Shri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under section 482 Cr.P.C. has been filed seeking quashing of the order dated 11.10.2023 passed by the learned Sessions Judge, Ghaziabad in Criminal Revision No. 592 of 2023 (M/s Deewan Chand Engineering and Constructions Vs. M/s Dhansudha Traders and others) as well as order dated 5.10.2023 passed by the Addl. Court No. 2 Ghaziabad in Complaint Case No. 1191 of 2022 (M/s Dhansudha Traders and others Vs. M/s Deewan Chand Engineering and Constructions) under Section 138 of N.I. Act Police Station Kavi Nagar District Ghaziabad whereby the application dated 4.8.2023 filed by the applicant under section 311 Cr.P.C. for granting an opportunity to further cross examination of P.W.-2. was rejected by the learned trial court.

3. Learned counsel for the applicant submits that from the perusal of the application dated 4.8.2023 it is clear that on 19.7.2023 counsel for the applicant herein was sick, therefore, the cross examination of P.W. 2 could not be done and it is further submitted that from the record it is apparent that on that date the P.W. 2 was also not present in the court, therefore, the trial court has erred in passing the order dated 19.7.2023 whereby the right to cross examining the P.W. 2 has been closed by the trial court.

4. On the hand, learned A.G.A. also pointed out an order dated 28.6.2019 passed by this court in an application under section 482 Cr.P.C. No. 24254 of 2019 filed by M/s Dhansudha Traders seeking early disposal of Case No. 788 of 2019 under section 138 N.I.Act, which was disposed of by this Court with a direction to the trial court to decide the aforesaid case in accordance with law as expeditiously as possible preferably within a period of six months.

5. From perusal of the order sheet as has been annexed as Annexure-3 to the instant application it appears that various opportunities were granted to the applicant herein to cross examine the P.W. 2 and continuously the adjournments were sought by the applicant herein and every time the application for exemption from appearance was filed on behalf of the application. No cross examination was conducted atleast since last four dates, i.e. 6.7.2023, 10.7.2023, 14.7.2023 and 19.7.2023therefore, in the aforesaid facts and circumstances, the trial court has closed the right to cross examine the P.W. 2 by the applicant herein. It appears that the averments in the application dated 4.8.2023 with regard to illness of Advocate has been made just for the purpose of delaying the proceedings and continuously the applicant herein is trying to delay the process by submitting exemption application and has failed to cross examine the P.W. 2, who was present in the court.

6. Therefore, there is no illegality in the orders dated 5.10.2023 passed by the trial court and the order dated 11.10.2023 passed by the revisional court. Therefore, the instant application is devoid of merit and is hereby **dismissed**.

Order Date :- 28.11.2023

o.k.