

Court No. - 89

Case :- APPLICATION U/S 482 No. - 44813 of 2023

Applicant :- Bhpendra @ Scooter @ Bhupendra Singh

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

Counsel for Applicant :- Rajesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard Sri Rajesh Kumar Yadav, 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 rejection order dated 20.07.2023 passed U/s 311 Cr.P.C. by court below and recall the prosecution witness (PW-1) (Complainant) for re-examination regarding the applicant who is summoned U/s 319 Cr.P.C. in ST No.145 of 2016, arising out of Case Crime No.293 of 2015, U/s 302/34, 504 I.P.C., P.S. Dannahar, District Mainpuri, pending in the court of Addl. Sessions Judge/FTC, Court No.1, Mainpuri.
3. Learned counsel for the applicant submitted that applicant was named in the FIR but Investigating Officer did not submit charge sheet against the applicant, thereafter, after framing of charge, P.W. 1 examined and on the statement of P.W. 1, applicant had been summoned on application U/s 319 Cr.P.C. by order dated 26/27.03.2018, thereafter, applicant released on bail, thereafter, applicant moved application on 20.09.2022 with prayer that an opportunity be provided to applicant to cross examine P.W. 1. Trial court without considering prayer of the applicant in arbitrary manner rejected the application of the applicant U/s 311 Cr.P.C. Applicant by way of application U/s 311 Cr.P.C. sought to examine P.W. 1 as applicant was summoned on the deposition of P.W. 1 and

he was not given proper opportunity for cross examine of P.W. 1. In application, relevant question has been framed which is required to cross examine from P.W. 1. Question raised in application is relevant for just decision of the case and denying opportunity to cross-examine P.W. 1 would abuse of process of Court.

4. *Per contra*, learned AGA opposed the submission raised by applicant's counsel and submitted that after summoning by the court U/s 319 Cr.P.C., applicant was given opportunity to cross examine P.W. 1.

5. Considering the argument raised by applicant's counsel and perused the entire record, it is evident that learned Magistrate has rejected the application of the applicant on the ground that applicant and another co-accused had been given time to cross examine P.W. 1. Trial court has referred five dates, i.e., 27.08.2019, 05.02.2020, 25.02.2020, 09.02.2021 and 16.02.2021 which has been given to accused to cross examine the P.W. 1. Applicant's counsel from order sheet pointed out that on the date fixed for 09.02.2021, 16.02.2021 and 22.02.2021 applicant was not present as he did not cross examine P.W. 1. For just and fair decision of the case, it is necessary, an opportunity be given to the applicant to cross examine P.W.1.

6. In view of the aforesaid, the order dated 20.07.2023 passed by trial court is hereby set aside with direction that applicant shall appear on 21.12.2023, on that date, trial court shall fix a date for cross-examine of P.W. 1 by the applicant.

7. With the aforesaid directions, this application under Section 482 Cr.P.C. stands **disposed of**.

Order Date :- 15.12.2023

Nitin Verma