

Court No. - 93

Case :- APPLICATION U/S 482 No. - 45900 of 2023

Applicant :- Barkat Ali

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

Counsel for Applicant :- Jagdev Singh, Chandra
Bhusan Kushwaha

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

Applicant has approached this Court through this application under Section 482 Code of Criminal Procedure seeking quashing of the impugned order dated 4.10.2023 passed by Additional Sessions Judge/ FTC, Court No.2, Bijnor in Sessions Trial No. 1145 of 2020, titled State Vs. Barkat, arising out of Case Crime No. 112 of 2020, under Section 452, 307 I.P.C., Police Station Haldaur, District Bijnor, whereby his application moved under Section 311 Code of Criminal Procedure seeking recall of witnesses (PW.-1 to P.W.-3) for cross-examination has been dismissed.

Learned counsel for applicant submits that P.W.-1 to P.W.-3 namely, Abdul Hafiz, Nisar Ahmad and Kutbuddin, respectively were examined by prosecution in March, 2021-July, 2021, and during the cross examination of these witnesses, the accused could not put relevant questions relating to the case pending at Mumbai, which has a direct bearing on the subject trial, therefore, the accused moved an application under Section 311 Cr.P.C.

praying for recalling of the said witnesses as the necessary questions relating to the said case are to be put to the witnesses. According to learned counsel, if, the witnesses are not recalled, it will result in prejudice to the accused. Learned counsel has argued that trial court vide impugned order dated 4.10.2023 has failed to appreciate the issues raised by the accused in a judicious manner and proceeded to dismiss his application. He prays that the application be allowed and the witnesses P.W.-1 to P.W.-3 be recalled.

During the course of hearing, learned counsel has referred to the affidavits of these witnesses sworn on 25.10.2023 appended as Annexure No.8 and submitted that the said witnesses have now made a statement in favour of the accused and in these changed circumstances, recalling of the witnesses would be justified for effective decision of the trial.

After hearing the learned counsel and considering his submissions, particularly the background of the case, this Court finds that at the stage when originally the witnesses were examined by prosecution, effective opportunity was given to the defence and all the witnesses were cross-examined at length. A perusal of the application moved by the accused-applicant also contains the averment that a question relating to the pending case at Mumbai was also put to the witnesses, but as the papers relating to the said case were not available, therefore, the said application

was filed.

Time and again this Court as well as the Hon'ble Supreme Court has observed that the powers vested under Section 311 Cr.P.C. is to be exercised in exceptional cases and only if, it is necessary in the facts and circumstances of the case to reach the truth. A perusal of the impugned order would reveal that trial court has carefully considered the material on record while dismissing the application.

Resultantly, finding no merit in this application, the same is hereby dismissed.

Order Date :- 16.12.2023
P.S.Parihar