

Court No. - 11

Case :- APPLICATION U/S 482 No. - 5996 of 2023

Applicant :- Vashishtha Vats Mishra @ Vashishtha Mishra

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P. Civil Sectt. Lko.
And Others

Counsel for Applicant :- Vidhi Pandya, Anand Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Anand Dubey, learned counsel appearing for the accused-petitioner, Sri Rao Narendra Singh, learned Additional Government Advocate appearing for the State. Sri Pradeep Kumar Singh, learned counsel appears for the complainant. Vakalatnama filed by him is taken on record.

2. Present petition under Section 482 Cr.P.C. has been filed seeking quashing of the orders dated 29.05.2023 as well as order dated 16.03.2023 passed by learned Additional Sessions Judge/Special Judge, POCSO Act, Lucknow by means of which the applications preferred by the applicant under Section 233 Cr.P.C. as well as 311 Cr.P.C. have been rejected.

3. The petitioner is facing trail in S.T. No.1393 of 2021 pending before Additional Sessions Judge/Special Judge (POCSO Act), Lucknow arising out of FIR No.252 of 2021 under Sections 342, 376, 506 IPC, 3/4 of the POCSO Act, Police Station Sushant Golf City, Lucknow.

4. After conducting the investigation, the police filed charge-sheet against the accused-petitioner under Sections 342, 376, 504 IPC, 3/4 POCSO Act.

5. After framing the charge, case was put on trail. The prosecution led the evidence.

6. After conclusion of the evidence on behalf of the prosecution, the accused-petitioner filed an application on 16.03.2023 under Section 233 Cr.P.C. submitting a list of 14 witnesses to be summoned as defence witnesses.

7. The prosecution objected to said application and said that the accused-petitioner had filed the application along with list of 14 witnesses in order to delay the trial. Out of 14 witnesses, whose names were given in the list filed along with the application by the accused-petitioner, one witness was

the accused himself and the second witness was his father. Other 12 witnesses included victim/prosecutrix, whose evidence was already recorded as prosecution witnesses, and she was cross examined by the accused-petitioner in detail.

8. Trial Court found that the accused can be a defence witness under Section 315 Cr.P.C. and father of the accused would also be a relevant witness for giving evidence in respect of innocence of the accused. Trial Court also noticed that the application did not mention anywhere that how 12 other witnesses would be relevant for defence and why they should be examined in the Court. The accused-petitioner had also submitted documentary evidence such as the Marriage Card, Certificates, CCTV footage, receipt of FastTag, Birth certificate.

9. Considering the aforesaid fact, the application of the the accused-petitioner was allowed for producing two persons i.e. accused-applicant himself and his father as defence witnesses. Said defence witnesses were examined and their cross examination was also conducted by the prosecution. Next date was fixed for 20.03.2023 for argument vide order dated 16.03.2023 passed by learned trial court.

10. It appears that for some reasons, arguments could not get concluded on 20.03.2023, and the accused-petitioner thereafter filed a fresh application under Section 311 Cr.P.C. on 16.05.2023.

11. In the meantime, after hearing the arguments, the case was fixed for 05.05.2023 for pronouncement of judgment, however, before the judgment could be pronounced, Presiding Officer was transferred, therefore, the judgment could not be passed.

12. The petitioner thereafter in order to delay proceedings filed aforesaid application under Section 311 Cr.P.C. on 16.05.2023 for examining five more witnesses out of list of 14 witnesses, which was given with the application filed on 16.03.2023 under Section 233 Cr.P.C. and said application was finally decided vide order dated 16.03.2023 itself. Out of five witnesses which were requested to be summoned on an application under Section 311 Cr.P.C., one was the prosecutrix herself which was already examined by the prosecution and she was fully cross examined.

13. Trial Court found it strange that how a prosecution witness, which was examined and cross examined, could be summoned as defence witness. The

accused-petitioner also did not mention that how other four witnesses would be relevant for the defence and what facts the accused would like to get proved from those four witnesses. It is also relevant to mention that the application which contains fourteen names as defence witnesses was disposed of vide order dated 16.03.2023 itself, and the said order became final. Trial Court, therefore, dismissed the said application dated 16.05.2023 vide impugned order dated 29.05.2023.

14. This Court finds that the only object of the petitioner is to delay trial proceedings. He has filed two successive applications before the trial court; one under Section 233 Cr.P.C. which was disposed of vide order dated 16.03.2023 and another application under Section 311 Cr.P.C. on 16.05.2023. View taken by the learned trial court is correct and in accordance with law, which does not require any interference by this Court in exercise of its jurisdiction under Section 482 Cr.P.C. The petition being devoid of merit and substance is hereby **dismissed**.

(Dinesh Kumar Singh, J.)

Order Date :- 20.6.2023
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