

Court No. - 12

Case :- APPLICATION U/S 482 No. - 7172 of 2023

Applicant :- Ramvilash Yadav And Others

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

Counsel for Applicant :- Brijesh Kumar Yadav

Counsel for Opposite Party :- G.A.,Anurag.S.Kaalesh

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned counsel for private respondent and learned AGA and perused the record.

2. Present application is filed with following prayer:-

"Issue a order for quashing the arbitrary, illegally re-open the evidence of prosecution impugned order dated-13-07-2023 passed by Additional session and District Judge room no.11, Lucknow in S.T no. 1180/2015, case style-State VS Ramvilash Yadav and other's bearing its crime No.152 of 2015 U/S- I.P.C P.S- Malihabad, contained as annexure No. 1 to this petition."

3. On 03.08.2023 following order was passed:-

"1. On 25.7.2023, following order was passed:-

"1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application (u/s 482 Cr.P.C.) has been filed for quashing the arbitrary, illegally re-open the evidence of prosecution, impugned order dated 13.07.2023 passed by Additional Session & District Judge, Lucknow in S.T. No.1180 of 2015 arising out of Case Crime No.152 of 2015, under Sections 302, 504 and 506 I.P.C., Police Station Malihabad, District Lucknow.

3. Learned counsel for the applicant submitted that as per the prosecution case, alleged incident is of the year 2015 and charge-sheet was filed by the Investigating Officer and cognizance was taken by the court below, and thereafter, case was committed to the court of session, which was registered as S.T. No.1180 of 2015. After framing of the charges, prosecution placed the witnesses, and thereafter, statement under Section 313 Cr.P.C. was concluded and two defence witnesses were also placed from the accused side. After completion of the defence evidence, the case was listed on 29.03.2023 and same was fixed for final hearing on 11.04.2023. On 11.04.2023, Presiding Officer was on leave, therefore, matter was fixed on 18.04.2023 for final argument. On the said date, ADGC (criminal) concluded his argument and matter was fixed for argument of the defence counsel on 18.04.2023 and on the next date, adjournment was sought from the side of accused and matter was fixed on

06.05.2023. On 06.05.2023 arguments from the side of accused, namely, Ramesh Kumar was concluded and matter was posted on 18.05.2023 for argument of the rest of the accused persons. On 18.05.2023 argument was done by defence counsel and matter was fixed for further hearing on 27.05.2023. Thereafter, on 14.06.2023, one application under Section 311 Cr.P.C. was moved by the complainant of the present case for recall of P.W.1 as well as P.W.2 with the averments that certain facts could not be placed before the Court and detailed objection was filed by the applicant, but court below allowed the application in the most mechanical manner as the case was at the verge of judgement and without any specific reason mentioned in the application, the same was allowed by the court below by recalling five prosecution witnesses, which is not permissible in the eyes of law.

4. Learned counsel for the applicant relied on the decision of the Hon'ble Supreme Court in the case of State (NCT of Delhi) vs. Shiv Kumar Yadav and Another reported in (2016) 2 SCC 402 and requested for indulgence of this Court.

5. Learned counsel for the applicant submitted that matter is listed before court below on 27.07.2023.

6. Learned A.G.A. opposes the prayer of applicant and submitted that there is no illegality in the order passed by the court below. He further submitted that certain facts as well as documents could not be placed before the court below. Hence, court below has rightly allowed the application for recall of five witnesses, but he does not dispute this fact that neither in the application nor in the order no specific reason for summoning of the witnesses has been assigned by the court below.

7. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application under Section 311 Cr.P.C. as well as impugned order passed by the court below, as it is evident that neither in the application nor in the impugned order no specific reason has been assigned for recall of the witnesses as after defence evidences almost argument of the prosecution as well as defence side was concluded. At this stage, witnesses can be recalled only on some specific points in the interest of substantial, but no reason has been mentioned in the application as well as in the order passed by the court below, therefore, matter requires consideration.

8. Issue notice to opposite party No.2.

9. List this case on 03.08.2023 at 11:30 A.M.

10. Learned counsel for the applicant undertakes that he will place this order before the court below and also communicate to the learned counsel for the private respondent.

11. It is also expected that on the next date, private respondent shall appear before this Court through counsel.

12. In the meantime, impugned order dated 13.07.2023 passed by Additional Session & District Judge, Lucknow in S.T. No.1180 of 2015 shall remain stayed."

2. Office has reported vide its report dated 3.8.2023 on the basis of report of C.J.M., Unnao that notice has already been served on private respondent and Vakalatnama has already been filed by Sri Anurag S. Kaleesh, Advocate but no one has put in appearance."

3. List this case on 11.8.2023 at 11:30 A.M.

4. Interim order, granted earlier, shall continue till the next date of listing.

5. In case, learned counsel for the complainant fails to assist the Court on the next date, matter shall be decided finally."

4. Learned counsel for private respondent/victim of the case submitted that in the application under Section 311 CrPC general averment was made for summoning of the witnesses, Kamlesh Kumar, Durga Prasad Yadav, Smt. Rukana, Sri Awadhesh, Ramswaroop, and the said application was allowed by the trial court by recalling all the witnesses.

5. Learned AGA also accepted the argument of learned counsel for the complainant and also consented for disposal of the application.

6. Considering submission of rival parties, learned AGA and going through the application under Section 311 CrPC and the order passed by the trial court on 13.07.2023, as it is undisputed fact that after conclusion of the prosecution evidence, statement under Section 313 CrPC was recorded and thereafter two such witnesses were also placed by the accused persons and afterwards the case was listed on 29.03.2023 and thereafter it was fixed for final hearing on 11.04.2023. As on the said date presiding officer was on leave therefore the matter was fixed for final argument on 18.04.2023. On the said date ADGC Criminal concluded his argument and the matter was fixed for argument of defence counsel on the next date 06.05.2023. On the said date argument from the side of accused Ramesh Kumar was concluded and matter was posted on 18.05.2023 for argument for rest of the accused persons. On the next date, part argument of the defence counsel was done and matter was posted for 27.05.2023 and in place of concluding the argument, on 14.06.2023 application under Section 311 CrPC was moved by the complainant for recall of the witness, with the vague averment and the learned court below also allowed the same, at the verge of conclusion of trial.

7. Considering the above, this Court is of the view that trial court committed error in allowing application under Section 311 CrPC and therefore impugned order is **set aside**.

8. Trial court is directed to conclude the trial expeditiously

without giving any unnecessary adjournment to either of the parties.

Order Date :- 11.10.2023

Vipul