

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10514 of 2023

Applicant :- Vikas Juvenile Thru. His Father Sri Shiv Ram

Opposite Party :- State Of U.P. Thru. Prin. Secy. Addl. Chief Secy. Lko And Another

Counsel for Applicant :- Shantanu Sharma, Anshuman Sharma, Athar Ali, Chandra Prakash Srivastava, Suresh Chandra Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard Mr. Suresh Chandra Srivastava, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. The present application has been filed for quashing the order dated 09.08.2023 passed by learned Additional Sessions Judge/learned District and Session Judge, Faizabad/Ayodhya in S.T. No.97 of 2021 U/s 376 I.P.C. & Section 3/4 P.O.C.S.O. Act, 2012, Police Station- Kotwali Bikapur, District- Faizabad/Ayodhya; for directing learned trial court to summon PW-1, PW-2, PW-3, PW-4 for cross examination and for quashing proceedings of Special Trial No.97 of 2021.

3. Learned counsel for the applicant submits that applicant was falsely implicated in the present case. He further submits that Criminal Revision No.69 of 2020 (***Vikas Juvenile Thru. His Father Sri Shiv Ram vs. State of U.P. and another***) was disposed of by this Court vide order dated 14.11.2022 with direction to trial court to conclude trial within a period of six months from the date of production of certified copy of the said order. He further submits that after framing of charge, trial was proceeded by trial court and the case was listed on 18.07.2022, on the said date, the examination in chief of PW-1 & PW-2 was recorded and examination in chief of PW-3 & PW-4 was also recorded on 08.06.2023 but counsel could not appear for cross-examination.

4. Submission of learned counsel for the applicant is that it is bounden duty of learned trial court to consider this fact that every accused person has a legal right to defend himself and, in case, he is unable to afford his counsel then legal aid should be provided to him on state expenses in accordance with provisions of Section 304 Cr.P.C. but in the present case,

learned trial court ignored the aforesaid provisions as well as the concept of providing adequate legal aid to accused person. It is further submitted that application U/s 311 Cr.P.C. was moved but the same was rejected in the most mechanical manner.

5. Learned counsel for the applicant relies on the decision of Hon'ble Apex Court in the case of ***State represented by Deputy Superintendent of Police vs. Tr. N. Seenivasagan*** reported in ***(2021) 2 JIC 10 SC*** and submits that without adequate cross-examination of the witnesses, it would be grave injustice to applicant. It is, thus, submitted that indulgence of this Court is required.

6. Learned A.G.A. opposes the prayer of applicant and submits that there is no illegality in the order passed by learned trial court. He relies on the decision of Hon'ble Apex Court in the case of ***Vinod Kumar vs. State of Pubjab*** reported in ***(2015) 3 SCC 220*** and submits that it was obligatory on the part of defense counsel to cross-examine the witnesses on the same day.

7. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application as well as other relevant documents; it is evident from the application U/s 311 Cr.P.C. as well as the impugned order that on 18.07.2022, examination in chief of PW-1 & PW-2 was recorded but the witnesses were not cross-examined by defense counsel as he did not appear before the court concerned, thereafter, cross examination was closed; and on 08.06.2023 examination in chief of PW-3 & PW-4 was also recorded then again no defense counsel appeared before the court concerned for cross-examination. It is obligatory on the part of trial court to honour the provisions of Section 304 Cr.P.C. for providing adequate legal aid, in case, the counsel of appellant/applicant is not appearing. In such circumstances, the impugned order passed by learned trial court is liable to set aside.

8. In view of above, the present application U/s 482 Cr.P.C. is **allowed** and order dated 09.08.2023 passed by learned Additional Sessions Judge/learned District and Session Judge, Faizabad/Ayodhya including entire proceedings thereof are hereby **quashed**.

9. Trial court is directed to ensure that, in case, applicant is unable to afford fees of his defense counsel then legal aid should be provided to him by engaging amicus curiae who has sufficient knowledge of criminal cases without wasting any

time.

10. Trial court is further directed to recall the witnesses for cross-examination and conclude the trial in accordance with law.

Order Date :- 28.10.2023

Arpan