

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10748 of 2023

Applicant :- Imran

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

Counsel for Applicant :- Vipin Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
2. Present application has been moved by the applicant to set aside the order dated 28.03.2023 passed by Additional Sessions Judge/F.T.C.-I, Ayodhya/Faizabad in S.T. No.19/2020 (State Vs. Imran)
3. Learned counsel for the applicant submitted that the applicant is an innocent person and has been falsely implicated in the present case. He further submitted that charge-sheet was filed by the Investigating Officer in the most mechanical manner, thereafter, trial was proceeded and victim was examined as P.W.4. He further submitted that cross-examination of victim was concluded on 01.11.2022 but it was found that certain relevant questions could not be asked during her cross-examination, therefore, application under Section 311 Cr.P.C. was moved but the same was rejected by the trial court in the most mechanical manner. He further submitted that in the application, it was requested that only three questions will be asked from the victim i.e. at the time of incident, from which door, the accused entered into her room? How much time did he stay in her room? And certain contradictions in the statement under Sections 161 and 164 Cr.P.C. may also be clarified during her cross-examination.
4. Learned counsel for the applicant relied on the decision of Hon'ble Apex Court in the case of ***Mohanlal Shamji Soni Vs. Union of India and Anr.*** reported in ***AIR 1991 SC 1346*** and decision of Co-ordinate Bench of this Court in the case of ***Barnali Baishya Vs. State of U.P. and Anr*** in ***Application U/S 482 No.753 of 2015*** and requested for kind indulgence of this Court.
5. Learned A.G.A. opposed the prayer of applicant and submitted that ample opportunity was given to cross-examine

the victim/P.W.4 and in her cross-examination, she stated that there was only one room. He further submitted that for the purpose of filling up of the lacuna, application under Section 311 Cr.P.C. may not be allowed, therefore, trial court has rightly rejected the application of applicant and the present application is also liable to be dismissed.

6. Considering the submissions of learned counsel for the parties, going through the contents of application, application under Section 311 Cr.P.C., as well as other relevant documents, as in the application, it is admitted that certain contradictions are to be clarified in cross-examination of victim/P.W.4, therefore, she may be recalled but it is well settled that only for filling up of lacuna or developing a case in the trial, witness can not be recalled, therefore, this Court is of the view that there is no illegality in the order passed by the trial court and the present application is liable to be dismissed.

7. Accordingly, the application is hereby **dismissed**.

Order Date :- 2.11.2023

V. Sinha