

Court No. - 12

Case :- APPLICATION U/S 482 No. - 11158 of 2023

Applicant :- Smt. Kiran Kumari Kannaujiya @ Kiran Kannaujiya

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

Counsel for Applicant :- Kaushlendra Tewari, Suresh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard Mr. I.P. Singh, learned Senior Advocate, assisted by Mr. Kaushlendra Tiwari, learned counsel for the applicant as well as learned AGA and perused the record.

2. Present petition is filed with the following prayer:-

"To stay the operation and implementation of the order dated 27.10.2023 passed by the court of Additional Session Judge, Court No. 16, Lucknow in S.T. No. 423/2011, Crime No. 703/2010, U/s 304 I.P.C. at P.S.- Gosainganj, District Lucknow and it is further prayed that this Hon'ble Court may graciously be pleased to stay the proceedings pending before the trial court till the pendency of the instant petition."

3. Learned counsel for the applicant submitted that the application for recall of witness was made under Section 311 CrPC was filed on 27.10.2023 but the same was rejected by the learned Court below in the most mechanical manner. He further submitted that in the application informant has categorically stated that her statement was recorded on 17.4.2013 and then ADGC narrated her statement in a twisted form and her statement was challenged and she came to the Court on 25.09.2023 to get the status of trial of case in question then it came into her knowledge that the trial is still going on and then she engaged a counsel for inspection of the file on 30.9.2023. Her counsel submitted vakalatnama and on 19.10.2023 inspection was completed and thereafter application for recall under Section 311 was filed. He further submitted Additional District Government Counsel, Criminal opposed the application of the applicant and the learned Court below rejected the application in the most mechanical manner, therefore, kind indulgence of this Court is necessary and the PW-1, informant/applicant may be recalled in the interest of justice.

4. Learned AGA vehemently opposed the prayer of the applicant and submitted that the offense in question is of the year 2010 and chargesheet was submitted after committal of the case which was registered as S.T. No.423 of 2011 and the trial of case in question is pending since 2011 and the applicant was examined as PW-1 and her examination in chief was conducted on 17.04.2013 and thereafter her cross examination was done on 23.12.2013 and on 01.02.2014 and no any specific point have been mentioned in the application and he also submitted that the complainant/informant has no right to submit any application at the fag end of the trial for recalling hersel as a witness before the trial Court and the learned trial Court has rightly rejected the application and the ADGC has rightly objected to the application, therefore, petiton is mis-conceived and liable to be dismissed.

5. Considering submissions of rival parties and going through the contents of the petition as well as the impugned order, as it is undisputed fact that the applicant is informant of the case in question and she was examined before the trial Court as PW1 on 17.04.2013 and thereafter her cross examination was done on 23.12.2013 and on 01.02.2014 and now when the trial is going to conclude at this stage PW1 submitted application for recalling herself as witness but her application was objected by the ADGC, criminal and the learned Trial Court has rightly observed that her cross-examination was done in accordance with law and now the trial is at the fag end and after ten years, without any specific reason witness cannot be recalled.

6. Therefore petition is mis-conceived and is **dismissed** accordingly.

Order Date :- 9.11.2023

Vipul