

Court No. - 12

Case :- CRIMINAL REVISION No. - 1317 of 2023

Revisionist :- Shailendra @ Baliram

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko
And 2 Others

Counsel for Revisionist :- Santosh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned AGA for the State of U.P., learned counsel for the private respondents and perused the record.

2. The present petition has been filed with following prayer:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to allow the instant criminal revision, setting-aside the impugned order dated 17.10.2023, passed by the learned Additional District and Sessions Judge, Court No.3, Faizabad, in Sessions Trial No.140 of 2017; State Versus Shailendra and another, arising out of Case Crime No.68 of 2013, under sections-323,504,308 I.P.C., relating to Police Station-Inayat Nagar, District- Faizabad, as contained in Annexure no.1 to this criminal revision, and further be pleased to direct the learned Trial Court to recall/summon the Investigating Officer/P.W.7 and allow the revisionist to cross examine him, in the interest of law and justice.

It is further most respectfully prayed that this Hon'ble Court may kindly be pleased to stay the further proceedings of Sessions Trial No.140 of 2017; State Versus Shailendra and another, arising out of Case Crime No.68 of 2013, under sections-323, 504, 308 I.P.C., relating to Police Station-Inayat Nagar, District- Faizabad, pending in the Court of learned Additional District and Sessions Judge, Court No.3, Faizabad, during the pendency of instant Criminal Revision, in the interest of justice."

3. Learned counsel for the applicant submitted that on 04.10.2023, Investigating Officer-Mr. P.K. Dwivedi (Retired Sub-Inspector) was called as P.W.-7 and his examination in chief was conducted and thereafter, due to illness, learned counsel for the applicant was unable to appear before the court below and cross-examine the witness and a request was made for adjournment but the opportunity to cross-examination was closed by the learned trial court on 04.10.2023 and recall application was filed but the same was rejected and the applicant is ready to bear expenses of the witness and requested that one opportunity may be given to applicant by recalling the P.W.-7 for the substantial justice.

4. Learned A.G.A. vehemently opposes the prayer of the applicant that P.W.-7 is a Retired Sub-Inspector and he is

suffering from ailment as well as paralysis and deliberately he was not cross-examined by the counsel for the applicant and there is no illegality in the rejection order as the case is listed for recording the statement under Section 313 CrPC.

5. Considering the submissions made by learned counsel for the parties, as it is evident from the record that trial of case in question is pending since 2017 and the applicant is on bail and P.W.:-7- Mr. P.K. Diwedi (Retired Sub-Inspector), Investigating Officer of the case in question, was examined on 04.10.2023. As the opportunity to cross-examine the P.W.:-7 was given to the learned counsel for the applicant but the same was not availed and at 05:30 P.M., application was given for adjournment and the opportunity to cross-examination was closed by the learned court below. As the Investigating Officer is one of the important witnesses in the criminal trial, thereafter, in the interest of justice, opportunity to cross-examination is to be given to the applicant on cost. Therefore, the order dated 17.10.2023 passed by the learned Additional District and Sessions Judge, Court No.3, Faizabad is hereby set aside and the Application No.35B filed by the applicant is allowed with the cost of Rs.10,000/- and the trial court is directed to recall the P.W.:-7 by giving one opportunity to the learned counsel for the applicant for cross-examination and Rs.10,000/- be given in cash to P.W.:-7 on the same date and same shall be enclosed on the order sheet.

6. With the aforesaid, the present application is **allowed**.

Order Date :- 1.12.2023

Raj