

Court No. - 12

Case :- APPLICATION U/S 482 No. - 11998 of 2023

Applicant :- Varis Ali

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

Counsel for Applicant :- Shiv Pal Singh, Ambrish Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard 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 impugned order dated 05.10.2023 passed by learned Additional Sessions Judge (F.T.C), Court No.37, Barabanki in Sessions Trial No. 1176/2020 (***State vs. Jumman Ali & Others***) arising out of Case Crime No. 219/2020 under sections 323, 504, 506, 304 I.P.C., Police Station- Satrikh, District- Barabanki; for directing the learned trial court i.e. learned Additional Sessions Judge (F.T.C), Court No.37, Barabanki to decide the application under section 319 Cr.P.C. afresh and summon the opposite party no.2 for facing trial.

3. Learned counsel for the applicant submits that private respondent was named in the F.I.R. of the case in question but name of private respondent was dropped by Investigating Officer and the case was committed to the court of session. He further submits that after framing of charge, the statement of witnesses were recorded, in which, they categorically stated the role of private respondent for giving life threat and exhortations, thereafter, the application U/s 319 Cr.P.C. was moved by applicant but the same was rejected by learned trial court in the most mechanical manner. It is further submitted that the injury was caused by accused persons with wooden stick on the head of Imran, as a result, he died. It is, thus, submitted that indulgence of this Court is required.

4. Learned A.G.A. vehemently opposes the prayer of applicant and submits that there is no illegality in the order passed by learned trial court as it is evident from the deposition of the witnesses that one injury was caused by accused persons on the head of the victim but no specific role of any accused is found in their deposition. He further submits that after detailed investigation, the name of private respondent was dropped by

the Investigating Officer and all these facts have already been considered by learned trial court, hence, there is no illegality in the order passed by it. He relies on the decision of Hon'ble Apex Court in the case of **Vikas Rathi vs. State of U.P.** reported in **(2023) Livelaw SC 172** and submits that if there is no cogent or direct evidence then the alleged persons cannot be summoned merely on the basis of presumption.

5. 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 that only one injury was found on the head of deceased and there is no specific allegations for causing injury to private respondent. In such circumstances, there is no illegality in the order passed by learned trial court.

6. With the above observations, this Court is of the view that the present application U/s 482 Cr.P.C. lacks merit and accordingly, stands **dismissed**.

Order Date :- 11.12.2023

Arpan