



2024:UHC:10055

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No

Date

Office Notes, reports,
orders or proceedings
or directions and
Registrar's order with
Signatures

C528 No.1068 of 2024

Hon'ble Pankaj Purohit, J.

Mr. Jitendra Chaudhary, learned counsel, for the applicant.

2. Mr. Vipin Panuly, learned Brief Holder, for the State of Uttarakhand.

3. Present application under Section 528 of the BNSS, 2023, is filed against the order dated 05.10.2024, passed by learned Additional Sessions Judge/FTSC, Haridwar, District Haridwar in Sessions Trial No.300 of 2022, "State Vs. Ashish Kumar", whereby the application moved on behalf of the applicant under Section 311 of CrPC, was rejected.

4. The fact in nutshell is that an application under Section 311 of CrPC, was moved by the applicant before the learned trial court with the averments that the earlier counsel for the accused could not ask certain questions, which are important for the just and proper decision of the case, and therefore, it was prayed that in order to ask question nos.1 to 5, it is in the interest of justice, to recall the victim in the Court. On the said application of the accused, a written objection was filed by the prosecution stating, therein, that the examination-in-chief of the victim-PW2, was done on 12.10.2023, and on that date, learned counsel for the accused could not appear. Hence, their opportunity to cross-examine the victim was closed.

5. On 29.11.2023, an application under Section 311 of CrPC, was moved on behalf of the accused stating, therein, that he was suffering from fever and his another advocate could not come from Delhi. The Hon'ble Court keeping in mind the aforesaid facts had given an opportunity to the accused for cross-examining the victim; the victim was recalled, and accordingly, on 15.07.2024, complete cross-examination of victim was done.

6. Now this is the subsequent application under Section 311 of CrPC by the accused, the court below had rejected the application moved on behalf of the applicant vide order impugned on the ground that the cross-examination of the victim was done after seven months of her examination-in-chief, and in such a condition, it cannot be stated that defence counsel was not being given sufficient time nor in any such ground the victim could be recalled, and the permission could be given to cross-examine the victim on the ground that some questions had left to be asked by the earlier counsel of the accused.

7. It is also apt to mention in this case that her examination-in-chief was done on 12.10.2023, thereafter, on the application moved by the accused under Section 311 of CrPC, the court recalled the victim and granted permission to cross-examine the victim again, for which the victim appeared in the court on 15.07.2024, on which the detailed cross-examination of the victim was done by the learned counsel for the accused. Thereafter, the evidence of the PW 3, was also recorded by the Court. Subsequent thereto, another

application moved on 11.09.2024, on behalf of the accused for again recalling the victim in the Court, and granting the accused one more opportunity to cross-examine the victim. After the perusal of cross-examination and examination-in-chief of the victim, the Court came to the conclusion that detailed cross-examination has already been done from the victim. Hence, in such a condition, it was not just or in the interest of justice to recall the victim again in the court. Accordingly, the said application was turned down.

8. I have carefully gone through the impugned order, and I am of the considered view that the reasons recorded by the court below for rejecting the application are just and proper, and there is no reasonable ground to interfere with the impugned order. The application under Section 311 of CrPC, moved on behalf of the applicant, is only to protract the trial and nothing else, which cannot be permitted by this Court.

9. Accordingly, the present C528 application is dismissed on the threshold itself.

(Pankaj Purohit, J.)

31.12.2024

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