

Court No. - 27

Case :- APPLICATION U/S 482 No. - 957 of 2024

Applicant :- Rajesh Tiwari

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

Counsel for Applicant :- Mahendra Pratap Singh, Sushil Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Sushil Kumar Singh, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C. the applicant has prayed for issuance of a direction to the learned trial court restraining it from delivering judgment in Sessions Trial No.31 of 2007, arising out of Case Crime No.282 of 2006, under Section 302 I.P.C. Police Station Unchahar, District Raebareli. It has been stated in the affidavit that the applicant had earlier filed an application under Section 482 Cr.P.C.No.923 of 2022, whereby the applicant had challenged an order dated 02.02.2022, passed by the learned Additional District & Sessions Judge/FTC-II, Raebareli rejecting the application under Section 311 Cr.P.C. read with Section 165 Evidence Act and another application under Section 216 Cr.P.C. filed by the applicant and the aforesaid application under Section 482 Cr.P.C. is still pending. Thereafter, on 06.11.2023, 29.11.2023, 16.12.2023 and 12.01.2024 the learned trial court has passed orders directing the prosecution to produce the entire case diary but the case diary has not been produced before learned trial court. In para 21 of the affidavit filed in support of the application, it has been stated that the prosecution has not produced the original case diary and on the direction of the

learned trial court it has submitted a photo copy of the case diary. On 12.01.2024 the learned trial court had passed an order that the matter be fixed for 21.01.2024 for arguments.

3. The learned counsel for the applicant has submitted that the learned trial court should not hear submissions in the case without production of the original case diary by the prosecution.

4. Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State has vehemently opposed the application and he has submitted that the earlier application under Section 482 Cr.P.C. filed by the applicant is still pending and no interim relief has been granted in that application. The present application has been filed under Section 482 Cr.P.C. without challenging the validity of any order and praying for restraining the trial court from delivering the judgment in the trial court and this application is designed merely to cause delay in conclusion of trial.

5. I have heard the submissions advanced by learned counsel for the parties and gone through the material available on record.

6. A copy of the order dated 02.02.2022 passed by learned trial court has been annexed with the application under Section 482 Cr.P.C., a perusal whereof indicates that the applicant-accused had filed an application under Section 216 Cr.P.C. stating that the learned trial court had framed the charges without perusing the case diary, which resulted in erroneous charges having been framed. The applicant had prayed that amendments be made in the charges after perusal of the case diary and the statements recorded under Section 161 Cr.P.C.

7. The applicant had filed another application under Section 311

Cr.P.C. & Section 165 Evidence Act for recalling PW-7, stating that he should be permitted to cross-examine PW-7 again after submission of the case diary. The learned trial court has recorded in the order dated 02.02.2022 that the statements of prosecution witnesses have been recorded. The statement of applicant under Section 313 Cr.P.C. was recorded on 15.11.2018 and thereafter the matter was fixed for defense evidence for a period of about a year. The case is fixed for hearing submissions for the past two years but the defense is not advancing submissions and is any how causing delay in disposal of the case.

8. Regarding the application under Section 216 Cr.P.C. the learned Trial Court has stated that the charges were framed on the basis of the material available on record and there appears to be no error or illegality in the charges framed. Had there been any error in the charges framed 15 years ago, the defense would have promptly highlighted the errors before the court. The defense has admitted in the application that the submissions had been heard in part in the case but thereafter an application for transferring the case was moved. The defense had commenced the submissions before the learned trial court where the trial has been transferred and thereafter the application under Section 311 Cr.P.C. read with Section 165 Evidence Act was moved for summoning the Investigating Officer. The Investigating Officer had already been examined and cross-examined and the matter was fixed for final arguments for the past more than two years. The applications were moved merely to cause delay in conclusion of trial and those applications were rejected by means of an order dated 02.02.2022.

9. On 06.11.2023, the learned trial court had passed an order for production of case diary and the matter was fixed for

29.11.2023 for hearing further submissions. On 29.11.2023 a reminder was sent for production of case diary, however, on 16.12.2023 the matter was fixed for 12.01.2024 for hearing submissions. On 12.01.2024 the matter was again adjourned for 21.01.2024.

10. Section 207 Cr.P.C. provides as follows:

"207. Supply to the accused of copy of police report and other documents.- In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

(i) the police report;

(ii) the first information report recorded under section 154;

(iii) the statements recorded under Sub-Section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under Sub-Section (6) of section 173;

(iv) the confessions and statements, if any, recorded under section 164;

(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under Sub-Section (5) of section 173:

Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused;

Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or

through pleader in Court."

11. A bare perusal of Section 207 Cr.P.C. indicates that it does not mandate production of the entire case diary before the learned trial court. Therefore, there is no substance in the plea of the learned counsel for the applicant that the learned trial court should be restrained from delivering judgment until production of the complete case diary. The application for modification of charges after perusal of the case diary and statements recorded under Section 161 Cr.P.C. has already been rejected by means of an order dated 02.02.2022, and another application filed by the applicant for reexamination of PW-7 has also been rejected. It is recorded in the order dated 02.02.2022 that the applicant is causing undue delay and hurdles in final decision of the case although it is being repetitively fixed for hearing submissions for the past two years.

12. The applicant had challenged the validity of the aforesaid order dated 02.02.2022 by filing an application under Section 482 Cr.P.C. No. 923 of 2022. A perusal of orders passed in the aforesaid case, which are available on the web portal of this court, indicates that when the matter was taken up as a fresh case on 04.03.2022 the learned counsel for the applicant had argued the matter at some length but thereafter he had prayed for time to file complete order sheets of trial. Thereafter the matter was listed on 02.09.2022 and on that date also, the aforesaid case was adjourned to enable the learned counsel for the applicant to prepare the case. On 23.11.2022 the learned counsel for the applicant had again sought adjournment. Thereafter, the matter was listed on 17.03.2023 on which date Sri Ashish Kumar Maurya, the learned counsel for the applicant sought adjournment of the case on the ground that his senior

was not present to advance submissions.

13. From a perusal of the order sheet of application under Section 482 Cr.P.C. No.923 of 2022 it appears that the applicant himself is lingering on the matter, although there is no interim order in the aforesaid case.

14. From the aforesaid facts it appears that the endeavour of the applicant is to any how manage to keep on causing delay in decision of Sessions Trial No.31 of 2007. When the present case was listed as fresh on 05.02.2024, after arguing the matter at some length the learned counsel for the applicant had sought adjournment to enable him to prepare his submissions to be advanced further. However, when the case was taken up today he stated that he has no more submissions to advance and the court may pass suitable orders. He could not point out any illegality in the trial court proceeding to conclude the trial without the original case diary having been produced by the prosecution.

15. Section 482 Cr.P.C. protects the inherent powers of the court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It appears that the present application under Section 482 Cr.P.C. has been filed merely in an attempt to cause undue delay in decision of the trial without pointing out any illegality in the approach adopted by the learned trial court. Therefore, the application has not been filed to prevent the abuse of process of law or to secure the ends of justice but the application itself has been filed as an abuse of the process of law and to defeat the ends of justice by delaying the final decision of the trial.

16. Accordingly, the application is dismissed and a direction is

issued to the learned trial court that in case there is no other impediment, the learned trial court should decide the case finally within a period of 30 days from the date of communication of this order. The learned A.G.A. is directed to communicate this order to the learned trial court.

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(Subhash Vidyarthi, J.)

Order Date :- 7.2.2024
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