

Court No. - 13**Case :-** CRIMINAL APPEAL No. - 1293 of 2024**Appellant :-** Pramod Kumar Mishra**Respondent :-** State Of U.P Thru. Prin. Secy. Home Lko. And Another**Counsel for Appellant :-** Gaurav Shukla**Counsel for Respondent :-** G.A.**Hon'ble Saurabh Lavania,J.**

1. Heard learned counsel for the appellant, learned AGA for the State and perused the record.
2. By means of instant appeal under Section 14A(2) of Scheduled Cases and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act"), the appellant has assailed the order dated 04.04.2024 passed by Special Judge (SC/ST) Act/Additional District Judge, District Sitapur in Case No. 18/2017, under Sections 364A/323/504/506 IPC and 3(1)(द) and 3(1)(ध) of S.C./S.T. Act, Police Station- Hargaon, District- Sitapur.
3. Brief facts of the case are to the effect that an application dated 28.02.2017, under Section 156(3) Cr.P.C. was filed by opposite party no.2 (Madan).
4. In short, as per application u/s 156(3) Cr.P.C., on 07.12.2016 at about 7 A.M. the opposite party no.2/complainant (Madan Lal) and his brother namely Bhagirath while both were going to their agricultural land, the appellant alongwith Mahendra s/o Bhagwan Baksh and Santosh s/o Jalli appeared and assaulted the complainant and his brother and made casteist remarks and also used abusive language and abducted Bhagirath and thereafter on 21.12.2016 demanded Rs. 70,000/- by making call on phone no. 799890717 of opposite party no.2 and as FIR was not lodged, the opposite party no. 2 made written complaint on 23.12.2016 to Director General of Police and Human Right Commission, and thereafter, Madan Lal got executed the sale deed on 02.02.2017 by Bhagirath and thereafter again the opposite party no.2 made complaint to District Magistrate and Superintendent of Police, Sitapur.

5. On the application dated 28.02.2017, bearing Case No. 18/2017 (Madan Versus Pramod Mishra), under Sections 364A/323/504/506 IPC and 3(1)(द) and 3(1)(घ) of SC/ST Act 1989, the trial court proceeded in the matter, after taking note of the statement(s) under Sections 200 and 202 Cr.P.C., and passed the order dated 13.10.2017, whereby summoned the accused.

6. After aforesaid, an application in the light of the order of this Court dated 08.06.2018 passed in Application under Sections 482/378/407 No. 3828 of 2018 (Pramod Kumar Mishra Versus State of U.P. and another), which was filed for quashing the summoning order dated 13.10.2017 and complaint case, was preferred by the appellant seeking discharge.

7. The trial court after considering the evidence on record rejected the application by means of the order dated 10.08.2018. Relevant portion of the order dated 10.08.2018 on reproduction reads as under:-

"अभियुक्त प्रमोद कुमार मिश्रा की ओर से आवेदनपत्र 12क इस आशय का प्रस्तुत किया गया है कि यह परिवाद गलत व असत्य तथ्यों पर आधारित है। परिवादी का भाई भागीरथ ने ग्राम सेलूमऊ परगना हरगौव, तहसील व जिला सीतापुर स्थित भूमि गाटा संख्या 28 व 36 में अपनी अंश भूमि तथा ग्राम नरोत्तमपुर में स्थित गाटा संख्या 60 की अपनी अंश भूमि धन की आवश्यकता पड़ने पर इन्हे पंजीकृत विक्रय विलेख द्वारा विक्रय की थी तथा इस सम्बन्ध में भागीरथ ने कलेक्टर सीतापुर से गैर अनुसूचित जाति के व्यक्ति को विक्रय करने की अनुज्ञा भी प्राप्त की थी। यह भी कहा गया है कि उपरोक्त बैनामे के आधार पर अभियुक्त प्रमोद कुमार मिश्रा का नाम राजस्व अभिलेखों में, प्रतिवादी मदन की आपत्तियों को खारिज करते हुये, नामान्तरण हो गया है। उपरोक्त बैनामा निरस्तीकरण के सम्बन्ध में मदन व भागीरथ द्वारा प्रथक-प्रथक दीवानी वाद भी प्रस्तुत किये गये थे तथा उसमें भागीरथ ने न्यायालय में स्वयं उपस्थित होकर व शपथ पत्र देकर बैनामा निष्पादन के तथ्य को स्वीकार किया था। यह कहा गया है कि प्रस्तुत प्रकरण जैसी कोई घटना कारित नहीं हुई है। तदनुसार दण्ड प्रक्रिया संहिता की धारा 245 की प्रक्रिया पूर्ण करते हुये उन्मोचित किये जाने की याचना की गई है।

आवेदनपत्र का विरोध करते हुये परिवादी की ओर से यह कथन किया गया है कि इस न्यायालय के समक्ष प्रस्तुत साक्ष्य के आधार

पर अभियुक्त प्रमोद कुमार मिश्रा को भा0 दं0 सं0 की धारा 323, 504, 506, 364ए एवं अनुसूचित जाति एवं जनजाति (अत्याचार निवारण) अधिनियम की धारा 3(1)(द)(ध) के अधीन तलब किया गया है तथा आरोप विरचित किये जाने के आधार पर्याप्त है।

प्रस्तुत प्रकरण में संक्षिप्त कथानक यह है कि मदन ने न्यायालय के समक्ष दण्ड प्रक्रिया संहिता की धारा 156(3) का आवेदनपत्र इस आशय का प्रस्तुत किया कि दिनांक 07.12.2016 को प्रातः 7.00 बजे जब वह अपने भाई भागीरथ के साथ खेत पर काम करने जा रहा था तभी रास्ते में प्रमोद कुमार मिश्रा सफेद रंग की मारुति कार लेकर रास्ते में रोक लिया तथा अपने दो साथियों महेन्द्र व संतोष के साथ मिलकर परिवादी व उसके भाई को जातिसूचक गालियाँ दी, लात घूँसों व लाठी डण्डों से काफी मारापीटा तथा भागीरथ को जान से मारने की धमकी देकर अपने साथ जबरन गाड़ी में बैठकर उठा ले गये। घटना की सूचना थाना हरगँव पर दिये जाने के बावजूद भी कोई कार्यवाही नहीं हुई। दिनांक 21.12.2016 को प्रमोद कुमार मिश्रा ने परिवादी के मोबाईल नम्बर पर सुबह 10.50 बजे फिरौती के रूप में 70,000/- रुपये की माँग की और न देने पर भाई को जान से मार देने की बात कही। यह भी कहा गया कि दिनांक 02.02.2017 को भागीरथ से धोखे से जबरदस्ती जमीन का बैनामा करा लिया गया है और भागीरथ अभी भी अभियुक्त के कब्जे में है। तदनुसार प्रथम सूचना रिपोर्ट अंकित कराये जाने की याचना की गई। इस न्यायालय के पूर्वाधिकारी द्वारा उपरोक्त वाद पत्र को परिवाद के रूप में पंजीकृत किये जाने का दिनांक 24.05.2017 को किया गया तदुपरान्त दण्ड प्रक्रिया संहिता की धारा 200 के अधीन परिवादी स्वयं व दण्ड प्रक्रिया संहिता की धारा 202 के अधीन पी0डब्लू0-1 नरेन्द्र व पी0डब्लू0-2 अनिल कुमार परीक्षित किये गये तथा इस न्यायालय के पूर्वाधिकारी के आदेश दिनांक 13.10.2017 के माध्यम अपठनीय प्रमोद कुमार मिश्रा को विचारण हेतु तलब किया गया। अभियुक्त प्रमोद कुमार मिश्रा उपस्थित न होने पर उनके विरुद्ध गैर जमानती वारण्ट जारी किये गये तथा इस न्यायालय के उपरोक्त तलबी आदेश तथा गैर जमानती वारण्ट के आदेश से व्यथित होकर अभियुक्त की ओर से दं0प्र0सं0 की धारा 482, 378, 407 के अधीन वाद संख्या 3828/2018 योजित किया गया तथा उपरोक्त प्रकरण में माननीय उच्च न्यायालय द्वारा दिनांक 08.06.2018 को अभियुक्त/याची को यह स्वतंत्रता दी कि वह विचारण न्यायालय के समक्ष दं0प्र0सं0 के सुसंगत प्राविधानों के अधीन आवेदन प्रस्तुत कर सकता है जिस क्रम में संदर्भित आवेदनपत्र 12क प्रस्तुत किया गया है।

इस न्यायालय के समक्ष दं0प्र0सं0 की धारा 200 व 202 के अधीन परीक्षित साक्षियों के बयानों के आलोक में मैं इस मत का हूँ कि

अभियुक्त प्रमोद कुमार मिश्रा के विरुद्ध भा0दं0सं0 की धारा 323, 504, 506, 364ए एवं अनुसूचित जाति एवं जनजाति (अत्याचार निवारण) अधिनियम की धारा 3(1)(द)(ध) में आरोप विरचित किये जाने के पर्याप्त आधार है। जहाँ तक आवेदनपत्र 12क में वर्णित तथ्यों का सम्बन्ध है ऐसे समस्त तथ्यों पर सम्यक विचार दौरान विचारण अभियोजन व बचाव पक्ष के द्वारा परीक्षित साक्ष्य के आलोक में किया जा सकेगा। तदनुसार आवेदन पत्र 12क निरस्त होने योग्य है।

आदेश

आवेदन पत्र 12क निरस्त किया जाता है। अभियुक्त न्यायालय में व्यक्तिगत रूप में दिनांक 17.08.2018 को उपस्थित हो।"

8. After the aforesaid, on 30.09.2021, the trial court framed the charges and thereafter before the trial court the statement(s) of witnesses namely opposite party no.2/Madan and Narendra Pal as P.W.1. and P.W.2 were recorded.

9. It would be apt to indicate at this stage that on 08.11.2023, the statement of P.W. 2 was concluded before the trial court and thereafter, as appeared from Annexure No. 9, after about 9 months, on 02.08.2024 the defence witness namely Ghanshyam Singh was produced before the trial court whose statement was recorded as DW 1 and the statement of DW-1/Ghanshyam Singh, was concluded on 11.03.2024.

10. From the aforesaid, it can be deduced that the appellant wants to delay the proceedings pending before the trial court.

11. It would be again relevant to indicate here that before this Court list of witnesses, if any placed before the trial court by the appellant, has not been placed on record.

12. After recording the statement of DW-1/Ghanshyam Singh, an application dated 01.04.2024, under Section 311 Cr.P.C., was preferred before the trial court, praying therein for summoning one Shyam Singh Bisen, Sub Registrar, District Sitapur. The contents of the application dated 01.04.2024, being relevant are extracted herein under:-

"निवेदन करना है कि परिवाद में परिवादी द्वारा विक्रेता भागीरथी की फिरौती दिनांक 7.12.2016 की सुबह 7:00 बजे की दशाई गई है इसी क्रम में दिनांक 2.2.2017 को विपक्षी द्वारा परिवादी के भाई भागीरथ से धोखे से जबरदस्ती उसकी जमीन का बैनामा करवा लिया गया है। यह तथ्य परिवाद में दर्शाया गया है, के कथन को साबित करने के लिए उप निबंधक सीतापुर को तलब करना न्यायहित में आवश्यक है।

अतः श्रीमान जी से प्रार्थना है कि न्यायहित में उप निबंधक, सीतापुर को बतौर साक्षी तलब करने की कृपा करें। महान कृपा होगी।

नाम साक्षी—श्री श्याम सिंह विसेन, उप निबंधक, सीतापुर। "

13. It is apparent from the contents of application dated 01.04.2024 that the same was preferred to prove the fact that the sale deed was not got executed and registered by the appellant from Bhagirath (brother of complainant/Madan) on 02.02.2017 under coercion or by playing fraud.

14. It would not be out of place to indicate here that complaint case is proceeding under Sections 364A/323/504/506 IPC and 3(1)(द) and 3(1)(ध) of SC/ST Act 1989 and aforesaid application dated 01.04.20224 was opposed by opposite party no.2 by preferring an objection dated 04.04.2024, which reads as under:-

"सविनय निवेदन है कि प्रार्थी उक्त मुकदमे में वादी मुकदमा है तथा उपरोक्त मुकदमा बहस हेतु श्रीमान जी के न्यायालय में विचाराधीन है परन्तु विपक्षी के द्वारा दिनांक—01.04.2024 को प्रार्थना पत्र धारा—311 दं0प्र0सं0 का दिया गया है जो कि औचित्यहीन है क्योंकि उक्त मुकदमे में विपक्षी का आरोप अं0 धारा—364ए, 323, 506 IPC & 3(1)द, ध SC/ST Act के तहत किया जा रहा है जिस कारण साक्षी उप निबन्धक सीतापुर को तलब करने की कोई आवश्यकता नहीं है।

अतः श्रीमान जी से विनम्र निवेदन है कि न्यायहित में विपक्षी के प्रार्थना पत्र दिनांक—01.04.2024 को निरस्त करने को आदेश पारित करने की कृपा करें। "

15. The trial court, thereafter, on 04.04.2024 rejected the application preferred by the appellant under Section 311 Cr.P.C. The order dated 04.04.2024, impugned herein, reads as under:-

"अभियुक्त प्रमोद कुमार मिश्रा के विद्वान अधिवक्ता की ओर से प्रार्थनापत्र अन्तर्गत धारा 311 दं0 प्र0 सं0 प्रस्तुत कर कथन किया गया है कि उक्त वाद में परिवादी द्वारा विक्रेता भागीरथी की फिरोती दिनांक 07.12.2016 की सुबह 7 बजे की दर्शायी गयी है इसी क्रम में दिनांक 2.02.2017 को विपक्षीगण परिवादी के भाई भगीरथी से धोखे से जबरदस्ती उसकी जमीन का बैनामा करवा लिया गया है। यह तथ्य परिवाद में दर्शाया गया है के कथन को साबित करने के लिये उप निबंधक सीतापुर को तलब करना न्यायहित में आवश्यक है। अतः न्यायहित में उपनिबंधक सीतापुर को बतौर साक्षी तलब करने की कृपा करें।

उक्त प्रार्थना पत्र पर विशेष लोक अभियोजक द्वारा आपत्ति करते हुये विरोध किया गया है।

सुना तथा पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से विदित होता है कि पत्रावली में अभियुक्तगण का बयान अन्तर्गत धारा 313 दं0प्र0सं0 अंकित किया जा चुका है तथा पत्रावली बहस के स्तर पर नियत है। इस स्तर पर अभियुक्त की ओर से प्रार्थना पत्र अन्तर्गत 311 दं0प्र0सं0 प्रस्तुत कर उपनिबंधक सीतापुर को पेश किये जाने की याचना की गयी है। पत्रावली के अवलोकन से स्पष्ट है कि अभियुक्त को प्रस्तुत प्रकरण में सफाई साक्ष्य प्रस्तुत करने का पर्याप्त अवसर दिया गया है कि जिसके बाद अभियुक्त की ओर से स्वयं अपनी साक्ष्य समाप्त की गयी है किन्तु पत्रावली बहस हेतु नियत होने के उपरान्त अभियुक्त द्वारा पुनः साक्षी प्रस्तुत किये जाने की याचना की गयी है। प्रस्तुत प्रकरण बैनामे के फ़ाड से नहीं बल्कि अपहरण के अपराध से सम्बन्धित है तथा ऐसा प्रतीत होता है कि अभियुक्त द्वारा जान बूझकर मामले को विलम्बित करने के आशय से यह प्रार्थना पत्र प्रस्तुत किया गया है जिसे स्वीकार किया जाना न्यायोचित प्रतीत नहीं होता है। अतः उक्त प्रार्थनापत्र अन्तर्गत धारा 311 दं0प्र0सं0 निरस्त किये जाने पर्याप्त आधार है।

आदेश

अभियुक्तगण की ओर से प्रस्तुत प्रार्थना पत्र अन्तर्गत धारा 311 दं0प्र0सं0 निरस्त किया जाता है। पत्रावली वास्ते बहस दिनांक 8.4. 2024 को पेश हो। "

16. Learned Counsel for the appellant impeaching the order dated 04.04.2024 submitted the allegation before the trial court in the complaint are to the effect that appellant abducted the brother of the complainant and got executed and registered a sale deed from him forcefully on 02.02.2017 and as such the presence of Sub Registrar Sitapur is required as witness of

defence, as he can prove the fact that sale deed was not got executed and registered by Bhagirath in favour of the appellant under coercion or under some threat or fraudulently.

17. He further submitted that in view of necessity of Sub Registrar as witness the application was preferred by the newly engaged counsel and the trial court is empowered to summon any witness in terms of Section 311 Cr.P.C. at any stage of the proceedings and as such the reasoning given by the trial court in the impugned order is unsustainable in the eyes of law.

18. In support of his submission he placed reliance on the judgment passed by Hon'ble Apex Court in the case of **Natasha Singh v. CBI, (2013)** reported in **5 SCC 741**. The relevant paragraphs, referred, of the same, are as under:-

"10. In Mohanlal Shamji Soni v. Union of India [Mohanlal Shamji Soni v. Union of India, 1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595 : AIR 1991 SC 1346] this Court examined the scope of Section 311 CrPC, and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The court has a duty to determine the truth, and to render a just decision. The same is also the object of Section 311 CrPC, wherein the court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re-examine any person, though not yet summoned as a witness, who are expected to be able to throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

11. In Rajeswar Prasad Misra v. State of W.B. [AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] this Court dealt with the ample power and jurisdiction vested in the court, with respect to taking additional evidence, and observed, that it may not be possible for the legislature to foresee all situations and possibilities and therefore, the court must examine the facts and circumstances of each case before it, and if it comes to the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered, and if such an action on its

part is justified, then the court must exercise such power. The Court further held as under :

“27. ... the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.”

(emphasis added)

12. *In Rajendra Prasad v. Narcotic Cell [(1999) 6 SCC 110 : 1999 SCC (Cri) 1062 : AIR 1999 SC 2292] this Court considered a similar issue and held as under :*

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

(emphasis added)

13. *Similarly, in P. Sanjeeva Rao v. State of A.P. [(2012) 7 SCC 56 : (2012) 3 SCC (Cri) 1 : AIR 2012 SC 2242] this Court examined the scope of the provisions of Section 311 CrPC and held as under :*
“20. Grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs [(2000) 10 SCC 430 : 2001 SCC (Cri) 1488] . The following passage is in this regard apposite :

“6. ... In such circumstances, if the new counsel thought to have the material witnesses further examined the court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

23. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. ... we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the

witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to the prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.”

(emphasis in original)

14. *In T. Nagappa v. Y.R. Muralidhar [(2008) 5 SCC 633 : (2008) 2 SCC (Cri) 677 : AIR 2008 SC 2010] , this Court held, that while considering such an application, the court must not imagine or assume what the deposition of the witness would be, in the event that an application under Section 311 CrPC is allowed and appreciate in its entirety, the said anticipated evidence. The Court held as under :*

“9. What should be the nature of evidence is not a matter which should be left only to the discretion of the court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses, etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant.”

15. *The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with*

great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.”

19. Opposing the present appeal, learned AGA says that the impugned order dated 04.04.2024 is not liable to be interfered with by this Court for the reasons that the trial court after considering the fact pertaining to the charges framed as also the stage of proceeding, rejected the application of the appellant.

20. Considered the aforesaid and perused the record.

21. On the scope and power of trial court under Section 311 Cr.P.C., this Court in the case of Ram Nayak Singh Versus State of U.P. and Others reported in MANU/UP/0248/2022, considered various pronouncements and thereafter observed as under:-

"23. From the above referred exposition of law, it is evident, in brief, that it is no more res-integra that the Trial Court, in the proceedings under the Code of Criminal Procedure, 1973, has ample/wide power to summon any material witness or person for examination or re-examination in exercise of its power conferred upon it under Section 311 and this discretionary power, which should be exercised judicially and not arbitrarily, can be exercised by the Trial Court at any stage of proceedings under the Code."

22. No doubt that application under Section 311 Cr.P.C. can be preferred at any stage of proceedings, however, while considering the application under Section 311 Cr.P.C. relevant facts should be considered by the trial court including the intention to move the said application as also the reasons for preferring the application under Section 311 Cr.P.C.

23. Upon due consideration of aforesaid as also taking note of scope of Section 311 Cr.P.C, this Court finds that the trial court has rightly rejected the application filed under Section 311

Cr.P.C. and the trial court has not committed any illegality in passing the order impugned dated 04.04.2024. It is for the following reasons:-

- (i) application under Section 311 Cr.P.C. is completely vague as in the same it has not been indicated that Shyam Singh Bisen, Sub Registrar Sitapur, was posted at relevant point of time i.e. on 02.02.2017, at Sitapur;
- (ii) the trial court is not proceeding in relation to allegations related to execution and registration of sale deed as after considering the entire facts indicated in the application under section 156(3) Cr.P.C., the trial court framed charges under sections 364A/323/504/506 IPC and 3(1)(द) and 3(1)(ए) of SC/ST Act 1989 and as such the Sub Registrar Sitapur, as witness, is not required before the trial court;
- (iii) to prove the facts pertaining to execution of deed, the sale deed in issue itself is sufficient and as such the alleged witness namely Shyam Singh Bisen, Sub Registrar Sitapur, is not required.
- (iv) it appears from the record that on one pretext or other the appellant wants to delay the proceedings pending before the trial court;
- (v) the application under Section 311 Cr.P.C. was preferred after conclusion of statement of D.W.1, which also shows that appellant wants to delay the proceedings pending before the trial court;

24. For the reasons aforesaid, the appeal is accordingly ***dismissed.***

25. No order as to costs.

Order Date :- 18.04.2024

Jyoti/-