

Court No. - 13

Case :- APPLICATION U/S 482 No. - 5718 of 2024

Applicant :- Ashutosh Pathak

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

Counsel for Applicant :- Paritosh Shukla, Sandeep Kumar Ojha, Sukh Deo Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the applicant, Sri Ajay Kumar Srivastava, learned A.G.A. for the State and Sri Arun Sinha, Advocate, Sri Siddharth Sinha, Advocate and Sri Ram Chandra Singh, Advocate, who have put in appearance and filed vakalatnama on behalf of opposite party No.2, which is taken on record.

2. By means of the present application under Section 482 CrPC, the petitioner has assailed the order dated 06.06.2024 and 18.05.2024 passed by the Additional Chief Judicial Magistrate, Court No. 20, District- Sultanpur in Criminal Case No. 7940 of 2024 (State Vs. Ashutosh Pathak and Others).

3. Vide order dated 18.05.2024, the application preferred by the defence under Section 311 CrPC for summoning Kanak Lata Singh and Vinay Kumar Pathak as witness was partly allowed and defence was directed to produce Vinay Kumar Pathak on the date fixed in the case i.e. 30.05.2024. The order indicates that this witness was treated as defence witness. The relevant portion of the order dated 18.05.2024 reads as under:

"उल्लेखनीय है कि अभियोजन के द्वारा तथ्य के उक्त 3 साक्षियों को परीक्षित करवाये जाने के उपरांत शेष साक्षियों को उन्मोचित नहीं करवाया गया है जो भी साक्षी अभियोजन के द्वारा प्रस्तुत किये गये हैं कि वे पीड़िता के माता-पिता हैं। किसी भी स्वतंत्र साक्षी का साक्ष्य अभियोजन की ओर से प्रस्तुत नहीं किया गया है। पत्रावली पर उपलब्ध तहरीर के परिशीलन से यह विदित हुआ कि उक्त तहरीर में पीड़िता ने यह कथन किया है कि " दिनांक 23.04.2018 को दिन में 03.04 बजे आशुतोष के दोस्त विनय कुमार पाठक ने प्रार्थिनी के पास फोन किया कि आशुतोष बहुत परेशान है। आप आ जाओ। प्रार्थिनी अपनी मां के साथ दोनों बच्चों को लेकर दिनांक

25.04.2018 को उसके घर गयी। दिनांक 28.04.2018 को दिन में 12.30 बजे आशुतोष के साथ झगड़ा होने पर आशुतोष ने वादिनी की मां व दोनों बच्चों को किचन में बंद करने का प्रयास करने लगा। विनय पाठक ने ताला खुलवाया फिर पुलिस आ गई तो वादिनी व वादिनी के बच्चों तथा मां को घर से सुरक्षित निकाला गया।

पीडिता द्वारा अपने साक्ष्य में भी विनय कुमार पाठक को फोन करके घटना के बावत बताये जाने का कथन किया गया है।

न्यायालय के मत में अभियुक्तगण द्वारा विनय कुमार पाठक को तलब किये जाने की याचना की गयी है जोकि घटनास्थल पर मौजूद भी थे एवं उसके नाम का उल्लेख वादिनी द्वारा अपनी तहरीर एवं साक्ष्य में भी किया गया है। वादिनी के कथनों से यह परिलक्षित होता है कि विनय कुमार पाठक को वादिनी एवं अभियुक्त के मध्य चल रहे विवाद की पूर्ण जानकारी है एवं उक्त साक्षी का साक्ष्य महत्वपूर्ण साक्षी की श्रेणी के अंतर्गत आता है , जिसे तलब किया जाना न्यायोचित एवं आवश्यक प्रतीत होता है ताकि प्रस्तुत वाद का निस्तारण उचित प्रकार से हो सके। जहां तक कनक लता सिंह को बतौर साक्षी तलब किये जाने का प्रश्न है तो उक्त साक्षी न्यायालय के मत में महत्वपूर्ण साक्षी की श्रेणी के अंतर्गत नहीं आती है। अतः उक्त साक्षी को तलब किये जाने का विधियोचित आधार नहीं है।

उल्लेखनीय है कि यद्यपि, पत्रावली सफाई साक्ष्य के स्तर पर नियत है एवं अभियुक्तगण की ओर से प्रार्थना पत्र अत्यंत विलंब से प्रस्तुत किया गया है, किंतु उपरोक्त वर्णित समस्त तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए अभियोजन की ओर से प्रस्तुत प्रार्थना पत्र अंतर्गत धारा 311 दं०प्र०सं० वास्ते तलब किये जाने विनय कुमार पाठक व कनक लता सिंह आंशिक रूप से स्वीकार होने योग्य है।

आदेश

अभियुक्तगण की ओर से प्रस्तुत प्रार्थना पत्र अंतर्गत धारा 311 दं०प्र०सं० वास्ते तलब किये जाने स्वतंत्र साक्षी विनय कुमार पाठक व कनक लता सिंह आंशिक रूप से स्वीकार किया जाता है। साक्षी **विनय कुमार पाठक** जरिये सम्मन तलब हों।

अभियुक्तगण को आदेशित किया जाता है कि वे अग्रिम नियत तिथि दिनांक 30.05.2024 को उक्त साक्षी विनय कुमार पाठक को न्यायालय के समक्ष प्रत्येक दशा में प्रस्तुत करना सुनिश्चित करें। ऐसा न करने की दशा में न्यायालय द्वारा विधिसम्मत आदेश पारित किया जाएगा। पत्रावली वास्ते सफाई साक्ष्य दिनांक **30.05.2024** को पेश हो।"

Vinay Kumar Pathak. The operative of the same reads as under:

"प्रस्तुत पत्रावली में माननीय उच्च न्यायालय द्वारा प्रस्तुत वाद के त्वरित निस्तारण हेतु आदेश पारित किया गया है। पत्रावली के परिशीलन से विदित होता है कि प्रस्तुत वाद में दिनांक 01.06.23 01.06.230 को को अभियुक्त का बयान अन्तर्गत धारा-313 न्यायालय साक्ष्य के स्तर पर पत्रावली में दं०प्र०सं०अंकित किया गया था एवं अभियुक्तगण के द्वारा अपने बयान में सफाई साक्ष्य प्रस्तुत किये जाने का कथन किया गया था। उसके उपरान्त से अभियुक्तगण द्वारा सफाई साक्ष्य के स्तर पर पत्रावली में धारा 311 दं.प्र.सं के तहत दो प्रार्थनापत्र प्रस्तुत किये जा चुके हैं, किन्तु कोई भी सफाई साक्ष्य अंकित नहीं करवाया जा रहा है। ऐसा प्रतीत होता है कि अभियुक्तगण मात्र वाद की कार्यवाही को लम्बित रखना चाहते हैं एवं उनके द्वारा माननीय उच्च न्यायालय के आदेश का अनुपालन सुनिश्चित करवाये जाने में किसी प्रकार का सहयोग नहीं किया जा रहा है। अतः न्यायालय के आदेश दिनांकित-05.06.2024 के प्रकाश में साक्षी विनय कुमार पाठक को परीक्षित करवाने का अवसर समाप्त किया जाता है। अभियुक्तगण को आदेशित किया जाता है कि वे अग्रिम नियत तिथि तक यदि कोई सफाई साक्ष्य हो, तो प्रस्तुत करना सुनिश्चित करें, अन्यथा की दशा में पत्रावली बहस हेतु नियत कर दी जायेगी। पत्रावली वास्ते शेष सफाई साक्ष्य दिनांक-21.06.24 को पेश हो।"

5. Brief facts of the case, which are relevant, are to the effect that an F.I.R. was lodged as Case Crime No. 19/18, under Section 498-A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act, at Police Station- Mahila Thana Gauriganj, District- Amethi implicating the applicant (husband of the informant) and three other persons namely Smt. Neelam Pathak (mother-in-law), Sri Sheetala Pathak (father-in-law) and Sri Shashank Pathak (brother-in-law). After investigation, the charge sheet(s) i.e. charge sheet No. 32 of 2018 against the accused-applicant and charge sheet No. 32-A of 2018 against Shashank Pathak and Neelam Pathak, were submitted and the trial court took cognizance and summoned the accused. Thereafter, the trial court framed charges against the accused under Section 498-A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act, which were read over to the accused and upon denial, the accused were put to trial.

6. The charge sheet No. 32 of 2018 indicates 12 witnesses including Vinay Kumar Pathak and charge sheet No. 32-A of 2018 indicates 16 witnesses including Vinay Kumar Pathak and Kanak Lata Singh but the prosecution to support its case produced three witnesses of the facts namely Shikha Pathak

(P.W.-1), Savita Pandey (P.W.-2) and Ashok Kumar Pandey (P.W.-3). The statements of formal witnesses of the prosecution were also recorded.

7. After completion of evidence of prosecution, date was fixed for recording of statement of accused in terms of Section 313 CrPC and the statement of the accused-applicant was also recorded on 01.05.2023 as appears from the impugned order dated 18.05.2024.

8. After recording of statement of accused-applicant in terms of Section 313 CrPC, the applicant preferred an application dated 19.09.2023 under Section 311 CrPC for summoning two persons as witness namely Vinay Kumar Pathak and Kanak Lata Singh.

9. It would be apt to indicate that from a perusal of the statement(s) of above-named witnesses recorded during investigation by the investigating officer, which are part of record, it is apparent that Vinay Kumar Pathak is friend of the accused-applicant and Kanak Lata Singh is neighbour of the accused-applicant and as per her statement, she is also the sister-in-law of the accused-applicant.

10. The application aforesaid was allowed by the trial court in part on 18.05.2024, whereby permitted the defence to examine Vinay Kumar Pathak and directed the accused to produce this witness on the next date fixed i.e. 30.05.2024, the operative portion of which has already been quoted above.

11. The case was fixed in terms of order dated 18.05.2024, on 30.05.2024.

12. On 30.05.2024, witness namely Vinay Kumar Pathak could not be examined and in this regard neither reasons has been disclosed in the present application, nor the order sheet has been annexed and to the view of this Court, this is nothing but material concealment on behalf of the accused-applicant.

13. It appears from the impugned order dated 06.06.2024 that on 30.05.2024, the case was adjourned to 05.06.2024 and on 05.06.2024 an application by the defence was preferred for adjournment of the case, though the date was fixed for examination of the witness who was before the trial court in terms of order dated

18.05.2024 passed by the trial court on the application preferred by the defence under Section 311 CrPC.

14. The trial court taking note of the judgment and order of this Court dated 25.07.2022 passed in Application U/S 483 No. 291 of 2022 (Shikha Pathak Vs. State of U.P. and Others), whereby in exercise of powers under Section 483 CrPC this Court had directed the trial court to conclude the trial expeditiously without granting unnecessary or long adjournment to either of the parties, allowed the application dated 05.06.2024 seeking adjournment on cost of Rs. 1000/- and fixed 06.06.2024 for recording of statement of Vinay Kumar Pathak, who was to be examined in terms of order dated 18.05.2024 passed by the trial court on an application preferred by the defence under Section 311 CrPC.

15. Again, on 06.06.2024, the defence preferred an application for adjournment and the trial court after considering the entire facts of the case including the judgment of this Court dated 25.07.2022 closed the opportunity of the defence to examine the witnesses namely Vinay Kumar Pathak.

16. Counsel for the applicant while impeaching both the orders, indicated above, stated that it was the duty of the prosecution to examine the witness who was called upon/ summoned by the trial court on the application preferred under Section 311 CrPC by the accused and as such the order dated 06.06.2024 is liable to be interfered with and be set aside and the trial court be directed to examine the witness first by the prosecution i.e. D.G.C. or A.D.G.C., as the case may be, and thereafter opportunity may be provided to the defence to cross examination. In regard to order dated 18.05.2024, it is stated that trial in partly allowing the application of the defence filed under Section 311 CrPC erred in law according to which the defence should be provided adequate opportunity to prove its case.

17. In support of his contention, counsel for the applicant placed reliance on a judgment rendered by the High Court of Madhya Pradesh in **S.R.S. Yadav Vs. State of Madhya Pradesh reported in 1997 SCC OnLine MP 341: Cri LJ 3860**. The relevant paras of the said judgment are extracted hereunder:

"2. The facts in brief in this case are as under: It is not disputed that the prosecution in the list of witnesses has named two witnesses. These are: (1) Chatur Singh son of Mannu Singh Kamria and (2) Gajraj Singh son of Mannu Singh Kamria. These witnesses were not examined by the prosecution. The accused moved an application and prayed that these two witnesses be treated as 'Court Witnesses'. This petition has been allowed. It is against the above order, the present petition has been filed.

11. In the present case, as indicated above, two of the witnesses, namely: (1) Chatur Singh son of Mannu Singh Kamria and (2) Gajraj Singh son of Mannu Singh Kamria were cited as prosecution witnesses. They were not produced by the prosecution. The accused gave an application for examining them as Court witnesses. That prayer of the accused has been allowed by the Court below in the interest of justice.

12. I am of the opinion, that both the parties would be at liberty to cross examine the witnesses and the requisite safeguards contemplated by law are available to both the sides. The discretion exercised by the Court below in the interest of justice cannot be said to be such which calls for any interference by this Court. This petition is accordingly found to be without merit and is dismissed."

18. It would be apt to indicate at this stage that in case relied upon by the counsel for the applicant the prayer was made from the side of defence to treat the prosecution witness as 'court witness', and taking note of the prayers sought by the accused in the case of **S.R.S. Yadav (supra)**, the High Court of Madhya Pradesh dismissed the petition challenging the order, whereby the trial court treated the witness as court witness as would appear from the above quoted paras of the judgment passed in the case of **S.R.S. Yadav (supra)**.

19. In the instant case, the applicant has not made such type of prayer as would appear from the contents of the application under Section 311 CrPC preferred by the defence on 19.09.2023, which are extracted hereunder:

"महोदय,

सविनय निवेदन है कि उपरोक्त अभियोग में प्रार्थी अभियुक्त बनाया गया है। उक्त पत्रावली आज सफाई साक्ष्य हेतु श्रीमान जी के समक्ष नियत है। उपरोक्त अभियोग में दौरान विवेचना विवेचनाधिकारी द्वारा दिनांक 28.09.2018 को सी०डी०र०-अष्ठम में स्वतंत्र साक्षी के रूप में गवाह विनय कुमार पाठक पुत्र माता प्रसाद पाठक निवासी ग्राम भगनपुर पो० अमेठी थाना मुंशीगंज जनपद अमेठी व दिनांक 04.11.2018 को एससीडी नं०-तृतीय में कनकलता सिंह पत्नी प्रभाकर सिंह निवासी ग्राम व पो० मेडिया थाना चुनार जिला मिर्जापुर का बयान अ० धारा 161 जा०फौ० अंकित किया गया है और अभियोजन साक्षी संख्या-4 (चार) आई०ओ० के दिनांक 06.01.2023 को मा० न्यायालय के समक्ष मुख्य परीक्षा के बयान में पेज नं०2 पर भी अंकित है कि दिनांक 28.07.12 को पर्चा नं०-अष्ठम में बयान स्वतंत्र साक्षी दिलीप कुमार मिश्रा व विनय कुमार पाठक का बयान अंकित किया गया है। दिनांक 04.11.2018 को एससीडी नं० तृतीय में उल्लिखित है कि स्वतंत्र साक्षी कनकलता सिंह का बयान अ० धारा 161 जा०फौ० दर्ज किया गया है। तथा अभियोजन साक्षी संख्या एक (पी०डब्ल्यू04) कथित पीडिता/ वादिनी शिखा पाठक के मा० न्यायालय के समक्ष मुख्य परीक्षा बयान में भी

कथित घटनास्थल पर विनय कुमार पाठक की मौजूदगी बतायी गयी है उपरोक्त पत्रावली में जो भी अभियोजन साक्षी (फैक्ट) मा० न्यायालय के समक्ष परीक्षित हुए हैं वह पीडिता तथा पीडिता के माता पिता हैं और उपरोक्त अभियोग में किसी भी स्वतंत्र साक्षी को अभियोजन पक्ष द्वारा पेश नहीं किया गया है ऐसी स्थिति में न्याय के अन्तिम बिन्दु तक पहुंचने के लिए उपरोक्त स्वतंत्र साक्षी विनय कुमार पाठक व कनकलता सिंह को तलब कर मा० न्यायालय के समक्ष परीक्षित होना विधि सम्मत व न्यायोचित तथा न्यायसंगत है।

अतः श्रीमान जी से निवेदन है कि उपरोक्त अभियोग में स्वतंत्र साक्षी विनय कुमार पाठक व कनकलता सिंह को तलब करने की कृपा की जाय।"

20. In view of the aforesaid, the judgment passed in the case of **S.R.S. Yadav (supra)** would not apply in this case.

21. Sri Ajai Kumar Srivastava, learned A.G.A. for the State and Sri Siddhartha Sinha, counsel for the opposite party No. 2 stated that the submissions of the counsel for the applicant are completely baseless, bogus and fallacious for the reason that the prosecution only produced three witnesses of the fact namely Shikha Pathak, Savita Padey and Ashok Kumar Pandey and other witnesses were formal witnesses and thereafter the trial court proceeded in the trial and the date was fixed for recording the statement of accused in terms of Section 313 CrPC which were recorded on 01.05,2023 and after delay of about four months on 19.09.2023, application was preferred by the defence under Section 311 CrPC for summoning of witnesses, which was partly allowed to the extent of Vinay Kumar Pathak, and in these circumstances of the case, this witness should be treated as defence witness and in this view of the matter, the defence was under obligation to examine Vinay Kumar Pathak and thereafter this witness, if required, could be examined by the prosecution.

22. In support of the contention that Vinay Kumar Pathak should be treated as defence witness, the reliance has been placed on the judgment passed by Hon'ble Apex Court in the case of **Sunderlal Vs. State of U.P. and another reported in 2024 SC 112**, which reads as under:-

"1. Leave granted.

2. The question which arises for consideration in this appeal is as to whether a witness which has been shown in the prosecution list but not examined on behalf of the prosecution, can be permitted to be examined as a defence witness.

3. In our considered view, both the Courts are wrong in declining the request of the appellant, as factually, the witness sought to be examined on the side of

the defence has not been examined by the prosecution. In other words, the prosecution has consequentially chosen to discharge the said witness and, therefore, he has not been put in the witness box to depose on behalf of the prosecution.

4. In such view of the matter, there is no bar in the law for examining the said witness as defence witness. After all, it is for the Trial Court to consider the evidentiary value of the said witness while coming to its conclusion.

5. Accordingly, the impugned order passed by the High Court confirming the order passed by the Trial Court stands set aside.

6. Consequently, the appeal stands allowed. The appellant is permitted to examine the prosecution witness as defence witness. Needless to state that it is well open to the prosecution to cross-examine the said witness.

7. Pending application(s), if any, shall stand disposed of."

23. Further submission is that the provisions of Section(s) 233 and/or Section 311 CrPC, in which witness can be summoned, cannot be made as a tool to delay the trial. In the instant case, there is already an order of this Court dated 25.07.2022 for expeditious conclusion of trial and in this case, application was preferred after a delay of about four months, after recording of statement under Section 313 CrPC, which was allowed on 18.05.2024, and thereafter on two occasions, the case was adjourned i.e. on 30.05.2024 and on 05.06.2024 and on 06.06.2024 again, adjournment was sought from the side of defence and these facts indicate that the accused-applicant is using the provisions as envisaged under CrPC, indicated above, just to delay the trial which is impermissible in law and this practice has been deprecated in various pronouncements.

24. Side opposite further submitted that the defence preferred two applications under Section 311 Cr.P.C. but the witness concerned was not examined and the trial court after considering entire facts of the case observed that the intention of the defence/accused is just to delay the trial and thereafter rejected the application for adjournment as also closed the opportunity to examine the witness namely Vinay Kumar Pathak.

25. It is also stated that the order of the trial court dated 18.05.2024 is just and proper as the trial court after considering the relevant facts, particularly the contents of the F.I.R. lodged by the PW-1/ victim (wife) permitted the defence to examine Vinay Kumar Pathak.

26. Lastly, it is submitted that in the facts and circumstances of the case, the present application is liable to be dismissed.

27. Considering the aforesaid and perused the record.

28. So far as the impugned order dated 18.05.2024 is concerned, the Court is of the view that the trial court has not committed any error. It is for the reason that it appears that the trial court duly considered the material available on record including the contents of F.I.R. lodged by PW-1/ Shikha Pathak according to which Vinay Kumar Pathak was present at the time of incident and therefore the trial court observed that Vinay Kumar Pathak is relevant witness and Kanak Lata Singh is not the relevant witness.

29. In regard to impugned order dated 06.06,2024, this Court considered the following facts:

(i) On 01.05.2023, the statements of accused were recorded in terms of Section 313 Cr.P.C. but final judgment could not be passed after hearing learned counsel for the parties in reasonable time and in this regard, reasons have not been disclosed in the present application.

(ii) On 19.09.2023, the defence preferred an application under Section 311 Cr.P.C., which was partly allowed and the defence was directed to produce Vinay Kumar Pathak as witness in terms of prayers sought in the application, quoted above, wherein it has not been stated or prayed that the witness Vinay Kumar Pathak be treated as court witness.

(iii) On the date fixed in the matter i.e. on 30.05.2024, this witness was not examined.

(iv) On 05.06.2024, this witness was again not examined and application for adjournment was moved.

(v) Again, on 06.06.2024, when the impugned order was passed closing the opportunity to examine the witness, an adjournment application was preferred.

(vi) The defence was under obligation to examine the witness.

(vii) Dilatory tactics adopted by the defence which includes preferring two applications under Section 311 Cr.P.C.

(viii) From the aforesaid, this Court finds that the applicant is avoiding the conclusion of trial and adopting dilatory tactics and using provisions of Cr.P.C. as a tool to delay the trial.

30. This Court also took note of the pronouncement(s) of the Hon'ble Apex Court on the subject.

31. In the case of **State of Haryana v. Ram Mehar, (2016) 8 SCC 762**, the Hon'ble Supreme Court has observed as under: -

"23. In Bablu Kumar v. State of Bihar, (2015) 8 SCC 787 the Court referred to the authorities in Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC, Rattiram v. State of Madhya Pradesh, (2012) 4 SCC 516, J. Jayalalithaa v. State of Karnataka, (2014) 2 SCC 401, State of Karnataka v. K. Yarappa Reddy, (1999) 8 SCC 715 and other decisions and came to hold that keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the court, it can irrefragably be stated that the court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. It has been further stated that the law does not countenance a "mock trial". It is a serious concern of society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty-bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. We may note with profit though the context was different, yet the message is writ large. The message is all kinds of individual notions of fair trial have no room".

"38. At this juncture, we think it apt to state that the exercise of power under Section 311 Cr.P.C. can be sought to be invoked either by the prosecution or by the accused persons or by the Court itself. The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck. We have already explained the use of the words "magnanimous approach" and how it should be understood. Regard being had to the concept of balance, and weighing the factual score on

the scale of balance, we are of the convinced opinion that the High Court has fallen into absolute error in axing the order passed by the learned trial Judge. If we allow ourselves to say, when the concept of fair trial is limitlessly stretched, having no boundaries, the orders like the present one may fall in the arena of sanctuary of errors. Hence, we reiterate the necessity of doctrine of balance".

32. In the case of **Mohd. Khalid v. State of West Bengal, (2002) 7 SCC 334**

the Hon'ble Apex Court has observed as under: -

"Before parting with the case, we may point out that the Designated Court deferred the cross-examination of the witnesses for a long time. That is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons arc there, the Trial Court should not adjourn the matter on the mere asking. These aspects were highlighted by this Court in State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667 and N.G. Dastane v. Shrikant Shivde, (2001) 6 SCC 135. In the case of State of U.P. v. Shambhu Nath Singh, (2001) 4 SCC 667, this Court deprecated the practice of Courts adjourning cases without examination of witnesses when they are in attendance with the following observations: -

"9. We make it abundantly clear that if a witness is present in Court he must be examined on that day. The Court must know that most of the witnesses could attend the Court only at heavy cost to them, after keeping aside their own avocation. Certainly- they incur suffering and loss of income. The meagre amount of bhatta (allowance) which a witness may be paid by the Court is generally a poor solace for the financial loss incurred by him. It is a said plight in the Trial Courts that witnesses who are called through summons or other processes stand at a doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by every one provided the presiding officer concerned has a commitment towards duty. No sadistic pleasure, in seeing how other persons summoned by him as witnesses are standard on account of the dimension of his judicial powers, can be a persuading factor for granting such adjournments lavishly, that too in a casual manner."

33. Upon due consideration of the facts and reasons indicated above as also the observations of the Hon'ble Apex Court in the judgments referred above, this Court is of the view that no interference in the order dated 06.06.2024 is required.

34. In view of the aforesaid, this Court finds no force in the present application. It is accordingly **dismissed**. Cost made easy.

Order Date :- 3.7.2024
(Manoj K.)