

Court No. - 13**Case :-** APPLICATION U/S 482 No. - 6725 of 2024**Applicant :-** Ramu @ Ram**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Lko. And Another**Counsel for Applicant :-** Vimal Kumar Pandey**Counsel for Opposite Party :-** G.A.**Hon'ble Saurabh Lavania,J.**

1. Heard.

2. The present application U/s 482 Cr.P.C. has been filed for the following main relief:-

"Wherefore, it is most respectfully prayed that this Hon'ble court may kindly be pleased to quash/ set aside the impugned order dated 24.6.2024 passed by Sessions Judge, Balrampur, in S. No. 02/2020, State Vs. Ramu arising out of case crime no. 225 /2019, under section 376,504,506 I.P. C, Police station Kotwali Dehat, District balrampur, on application under section 311 Cr.P.C., as contained in Annexure no. 1 to this application in the interest of justice.

It is further prayed that this Hon'ble court may kindly be pleased to direct the learned court below to call the Pw-1/victim of this case for her cross examination in the interest of justice."

3. The present application under Section 482 Cr.P.C. has been filed by the applicant challenging the order dated 24.06.2024, passed by Sessions Judge, Balrampur (in short 'trial court'), in S.T. No. 02/2020 (State Vs. Ramu) arising out of case crime no. 225/2019, under section 376,504,506 I.P.C,

Police Station Kotwali Dehat, District Balrampur, on an application preferred by the accused/applicant under Section 311 Cr.P.C. praying therein to recall the P.W.1.

4. The facts which can be deduced from the pleadings and material available on record are to the effect that an FIR was lodged on 24.07.2019 registered as Case Crime No. 225 of 2019 by the victim making allegations against the applicant to attract the offence under Sections 376,504,506 I.P.C, Police Station Kotwali Dehat, District Balrampur.

5. Thereafter, the Investigating Officer submitted the charge-sheet and thereafter cognizance was taken and the matter was committed to the Sessions Court and the case was registered as Sessions Trial No. 2 of 2020, which is part of action plan of this Court, and where the charges were framed against the applicant and upon denial the applicant was put to trial.

6. To establish his case prosecution placed before the trial court the documentary evidence as also produced witnesses of the fact.

7. The victim was produced as P.W.1 whose statement was recorded on 13.08.2021 thereafter she was cross-examined on 13.08.2021 and 03.09.2021. Cross examination of this witness indicates that a question was put with regard to the statement of the victim recorded in terms of Section 164 Cr.P.C.

8. After conclusion of statement of P.W.1 the other witnesses of facts were produced by the prosecution.

9. After the aforesaid the applicant preferred an application under Section 311 Cr.P.C. for recalling of P.W.1, who was examined and cross-examined on 13.08.2021 and 03.09.2021.

10. The application under Section 311 Cr.P.C. was preferred by the applicant on 24.06.2024 and the same was rejected by the trial court on the same day i.e. 24.06.2024. From the aforesaid it is apparent that application under Section 311 Cr.P.C. was preferred by the applicant after delay of about 3 years.

11. The trial Court upon due consideration rejected the application for recalling of P.W.1 for further cross-examination, vide impugned order dated 24.06.2024. Relevant portion of the order dated 24.06.2024 is extracted hereinunder:-

"दिनांक—24.06.2024

पत्रावली पेश हुई। पुकार कराई गई। विद्वान शासकीय अधिवक्ता उपस्थित। अभियुक्त रामू जरिये अधिवक्ता उपस्थित।

प्रार्थना पत्र 32ख अंतर्गत धारा 311 दं0प्र0सं0 का निस्तारण

आज प्रार्थी/अभियुक्त की ओर से प्रार्थना पत्र 32 ख अंतर्गत धारा 311 दं0प्र0सं0 इस आशय का प्रस्तुत किया गया है कि पीड़िता पी0डब्लू01 का जिरह किया गया था, परन्तु भूलवश धारा 164 दं0प्र0सं0 के बयान के बारे में सम्यक रूप से जिरह नहीं की गई। उक्त आधार पर प्रार्थना की गई कि पीड़िता पी0डब्लू01 को प्रतिपरीक्षण हेतु पुनः तलब किया जाय।

प्रार्थना पत्र की प्रति विद्वान जिला शासकीय अधिवक्ता को प्राप्त हो चुकी है।

विद्वान जिला शासकीय अधिवक्ता के द्वारा मौखिक रूप से आपत्ति करते हुए यह तर्क दिए गए कि पीड़िता पी0डब्लू01 से दो भिन्न-भिन्न तिथियों पर विस्तृत प्रतिपरीक्षण बचाव पक्ष के द्वारा किया जा चुका है। प्रार्थना पत्र केवल विलंबित करने के उद्देश्य से दिया गया है।

सुना तथा पत्रावली का अवलोकन किया।

यह सत्र परीक्षण संख्या-02/2020 माननीय उच्च न्यायालय से निर्दिष्ट एक्शन प्लान की पत्रावली का भाग है, जिसका शीघ्र अति शीघ्र निस्तारण किया जाना अति आवश्यक है।

प्रार्थना पत्र 32ख अंतर्गत धारा 311 दं0प्र0सं0 के परिशीलन से यह स्पष्ट है कि उक्त प्रार्थना पत्र में ऐसा कोई विशिष्ट तथ्य, जिस पर प्रतिपरीक्षण किया जाना आवश्यक हो, का

उल्लेख नहीं किया गया है। प्रार्थनापत्र में ऐसा कोई कारण भी दर्शित नहीं किया गया है कि पीड़िता पी0डब्लू01 को पुनः प्रतिपरीक्षण हेतु क्यों आहूत किया जाए। इस आशय का भी कोई उल्लेख प्रार्थना पत्र में नहीं पाया जाता है कि पीड़िता पी0डब्लू01 को पुनः प्रतिपरीक्षण के लिए आहूत नहीं किए जाने से अभियुक्त को क्या **Prejudice** कारित होगी। अभियुक्त को उक्त साक्षी से प्रतिपरीक्षण हेतु पूर्व में दो भिन्न तिथियों पर पर्याप्त अवसर दिया गया था कि वह प्रतिपरीक्षण कर अपनी पूर्ण संतुष्टि कर ले। अभियुक्त की ओर से पीड़िता पी0डब्लू01 से प्रतिपरीक्षण पूर्ण करने के उपरांत ही शेष अभियोजन साक्ष्य में पत्रावली नियत की गई। चूंकि एक्शन प्लान की पत्रावली है। अतः ऐसी स्थिति में समस्त तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए उपरोक्त प्रार्थना पत्र बलहीन होने के कारण निरस्त किए जाने योग्य हैं।

आदेश

प्रार्थना पत्र 32ख अंतर्गत धारा 311 दं0प्र0सं0 निरस्त किया जाता है। आज पत्रावली शेष अभियोजन साक्ष्य में नियत है। विद्वान जिला शासकीय अधिवक्ता द्वारा बताया गया कि अभियोजन साक्षी आज न्यायालय में उपस्थित है।"

12. In the aforesaid background of the case, present application has been filed.

13. Learned counsel for the applicant says that as per settled principle of law the application ought to have been allowed by the trial Court and the order impugned is against the principle settled in this regard as also the observations made by the Hon'ble Apex Court in regard to expression '*Fair Trial*'. As such, interference of this Court is required in the matter.

14. Learned AGA opposed the present application. He stated that the application under Section 311 Cr.P.C. was moved with sole intention to delay the trial, which is impermissible and in this view of the matter, the application has rightly been rejected by the trial Court. Prayer is to affirm the impugned order and dismiss the application.

15. Considered the submissions advanced by the learned counsel for the parties and perused the record.

16. Considered the aforesaid facts and the observations made by the trial Court in the order dated 24.06.2024 and the principles related to recall of witness under Section 311 Cr.P.C. settled by the Hon'ble Apex Court in the case(s) of *Mohd. Khalid Versus State of West Bengal* (2002) 7 SCC 334, *Hanuman Prasad (Supra)*, *Natasha Singh vs. CBI*, (2013) 5 SCC 741 : (2013) 4 SCC (Cri) 828 : 2013 SCC OnLine SC 444, *State of Haryana vs. Ram Mehar and others*; (2016) 8 SCC 762, *Swapan Kumar Chatterjee vs. Central Bureau of Investigation*, (2019) 14 SCC 328; *Varsha Garg vs. State of Madhya Pradesh and Others*; 2022 SCC OnLine SC 986 and as also by this Court in *Application under Section 482 Cr.P.C. No. 274 of 2022 (Ram Nayak Singh vs. State of U.P. & Another)*.

17. It is well settled by catena of decisions by the Hon'ble Apex Court that the power under Section 311 Cr.P.C. must be exercised with the care, caution and circumspection and only for strong and valid reasons. The recall of a witness already examined should not be a matter of course and discretion given to the court in this regard has to be exercised judicially to prevent failure of justice. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

18. The Court is fully conscious of the position that after all the trial is basically for the prisoners/accused and the Court should afford an opportunity to them in the fairest manner possible. At the same time, the Court should bear in mind that

fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right. Recalling of witnesses has to be applied on the basis of judicially established and accepted principles.

19. In the facts of the case it would be apt to refer the observations made in the judgment(s) passed in the case of ***Mohd. Khalid (Supra)*** and ***Ram Mehar (Supra)***.

20. In the case of ***Mohd. Khalid (Supra)***, the Hon'ble Apex Court 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 are 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 and others (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 and others (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."

21. In the case of **Ram Mehar (Supra)** the Hon'ble Apex Court observed as under:-

"23. In Bablu Kumar and others v. State of Bihar and another, (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 and others v. State of Madhya Pradesh (2012) 4 SCC 516, J. Jayalalithaa and others v. State of Karnataka and others (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".

22. Having considered the aforesaid, this Court finds that application was moved with sole intention to delay the trial which has not been concluded despite delay of about 4 years

and the process adopted by the defence is nothing, but an abuse of process of law. It is for the following reason(s):-

- (i) Specific allegations against the applicant was levelled under Sections 376,504,506 I.P.C, in the FIR lodged way back in the year 2019;
- (ii) Before the trial court P.W.1/victim was examined and cross-examined on 13.08.2021 and 03.09.2021;
- (iii) After about three years the applicant moved an application under Section 311 Cr.P.C. for further cross-examination of PW-1, who was examined and cross-examined on 13.08.2021 and 03.09.2021;
- (iv) The application U/s 311 Cr.P.C. is completely vague as is evident from the application annexed as Annexure No.3 to the present application.

23. For the aforesaid, this Court does not find any illegality in the impugned order dated 24.06.2024. The instant application under Section 482 Cr.P.C. is hereby **dismissed**. Cost made easy.

Order Date :- 31.7.2024/Jyoti/-