

Court No. - 14

Case :- CRIMINAL REVISION No. - 1335 of 2024

Revisionist :- Sarvesh Saxena @ Sarvesh Kumar Saxena

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

Counsel for Revisionist :- Umesh Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard learned counsel for the revisionist and Sri Rajesh Kumar Singh, learned A.G.A. for the State-opposite party No.1.

2. In view of the order proposed to be passed, notice to the opposite party no.2 is dispensed with.

3. The instant criminal revision has been filed by the revisionist with a prayer to quash the impugned judgment and order dated 31.07.2024 passed by learned Special Judge, SC/ST Act, Faizabad (Ayodhya) in Special Sessions Trial No.78/2022: *State vs. Sarvesh Saxena and others* arising out of F.I.R. No.0413/2021, under Sections 323, 504, 506, 447, 452 I.P.C. and Section 3(2)(va) of SC/ST Act, Police Station Kotwali Ayodhya, District Ayodhya whereby the learned trial court has rejected the application 15B dated 13.05.2024 filed by the revisionist under Section 311 Cr.P.C. for recalling of the P.W.1- Urmila Sonkar for cross examination on some certain points in the interest of justice.

4. Submission of learned counsel for the revisionist is that learned trial court has rejected the application 15B filed by the revisionist mechanically without understanding true import of provision contained in Section 311 Cr.P.C. His further submission is that learned trial court persuade with the fact that a detailed cross examination of the P.W.1- Urmila Sonkar having been done, therefore, the application came to be rejected.

5. His further submission is that, in fact, the application dated 13.05.2024 moved by the revisionist under Section 311 Cr.P.C. came to be wrongly rejected by learned trial court on the ground that it has been moved with a view to cause delay in disposal of the trial. His further submission is that the right of recall of a witness as envisaged under Section 311 Cr.P.C. is a valuable right of accused or any party, who is likely to be affected due to non-examination or recall of such witness for cross-examination or further examination as a case may be. He further submits that if P.W.1-Urmila Sonkar is not recalled for cross examination the revisionist would suffer irreparable loss, therefore, he prays to allow the revision by setting aside the impugned judgment and order dated 31.07.2024.

6. In this view of the matter, learned counsel for the revisionist has submitted that revisionist may be afforded only one opportunity of examination of P.W.1 so that the revisionist may defend himself effectively as the same is a part of right of fair trial to the revisionist.

7. Learned counsel for the revisionist has placed reliance on the judgment rendered by Hon'ble the Apex Court in **V. N. Patil vs. K. Niranjan Kumar and others : (2021) 3 SCC 661**, wherein para 15 has held as under :-

"15. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".

8. Per contra, learned A.G.A. has vehemently opposed the prayer primarily on the ground that as the impugned order has come to be passed by learned Special Judge, SC/ST Act, Faizabad (Ayodhya) and too in a matter pertaining to SC/ST

Act, therefore, the remedy available to the present revisionist is filing a criminal appeal under Section 14A of the SC/ST Act. He has further submitted that the impugned order dated 31.07.2024 has rightly been passed by the learned trial court. No illegality or irregularity can exist in the impugned order dated 31.07.2024. His further submission is that the power vested with learned trial court under Section 311 Cr.P.C. is discretionary in nature and no court can be compelled to pass any particular order in exercise of its discretionary power in a particular manner.

9. Thus, the instant revision deserves to be rejected. He has also submitted that the recall of any witness can also be refused on the ground that the same has been moved maliciously with a view to delay the proceedings.

10. Learned A.G.A. has placed reliance on the judgment rendered by Hon'ble Apex Court in **Ratan Lal vs. Prahlad Jat and others : (2017) 9 SCC 340.**

11. Section 311 Cr.P.C. being germane to the controversy is quoted herein below :

"311. Power to summon material witness, or examine person present-

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

12. Having heard learned counsel for the parties and having regard to the overall facts and circumstances of this case as stated above and upon perusal of record, it appears that during pendency of the Special Trial No.78 of 2022 : *State vs. Sarvesh Saxena and others*, an application No.15b came to be filed on behalf of revisionist/accused for recalling P.W.1 for cross examination. It also transpires from perusal of record that learned trial court proceeded to reject

aforesaid application 15b by recording clear and cogent finding of fact that there was no mention, whatsoever, about the question(s) which were to be put to the witness who was prayed to be recalled. In such a situation, learned trial court has recorded in its order that all the relevant question(s) have already been put to the witness sought to be recalled, therefore, learned trial court did not find any good ground for allowing the aforesaid application.

13. Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab: (2015) 3 SCC 220** in paragraphs no.3, 57.1, 57.2 and 57.4 has held as under:-

"3. The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognise "the felt necessities of time" and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that a civilised and orderly society thrives on the rule of law which includes "fair trial" for the accused as well as the prosecution?

57.1. Adjournments are sought on the drop of a hat by the counsel, even though the witness is present in court, contrary to all principles of holding a trial. That apart, after the examination-in-chief of a witness is over, adjournment is sought for cross-examination and the disquieting feature is that the trial courts grant time. The law requires special reasons to be recorded for grant of time but the same is not taken note of.

57.2. As has been noticed earlier, in the instant case the cross-examination has taken place after a year and 8 months allowing ample time to pressurise the witness and to gain over him by adopting all kinds of tactics.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross-examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial."

14. Before advertng to the scope of Section 311 Cr.P.C. and the reasons for which the same came

to be dismissed by learned trial court it is important to refer to a judgment of Hon'ble Apex Court in **State of Haryana vs. Ram Mehar : 2016 (8) SCC 762** wherein the Hon'ble Apex Court has held that the interest of victim and accused must be balanced. The concept of fair trial cannot be limitlessly stretched to permit recall of witness endlessly on the ground of magnanimity. Needless to say that it is also settled legal position that recall of any witness cannot be permitted to fill lacunae/lacunae, if any, appearing on the case of particular party. It is also settled legal position that power under Section 311 Cr.P.C. cannot be exercised with application has been filed as an abuse of process of law.

15. Having regard to the aforesaid settled legal position when adverted to the facts of this case, it is noticed that P.W.1-Urmila Sonkar was examined at length by the learned counsel for revisionist/accused and thereafter the application which came to be filed for recalling the aforesaid P.W.1- Urmila Sonkar was dismissed by learned trial court by means of a reasoned order mentioning therein that the question which were to be put to the witness, though were not mentioned in the application, were disclosed for the first time by learned counsel for the accused orally during argument and which were found to have been already put to be witness concerned.

16. Thus, in view of the aforesaid clear finding of fact, no fault with the impugned order dated 31.07.2024 can be found. The impugned order does not suffer from any illegality or irregularity, therefore, no interference for the same is warranted by this Court.

17. It is needless to mention that having regard to the later part of provision contained in Section 311 Cr.P.C., it is always open that in case, learned trial Court at any appropriate stage finds or considers presence or recall of any witness necessary for just decision of the case as envisaged in Section 311 Cr.P.C. itself, learned trial Court may do so in strict accordance with law without being influenced by any observations made herein above.

18. With the aforesaid, the revision being bereft of merit is, accordingly, **dismissed**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 20.11.2024
Shubhankar