

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10286 of 2024

Applicant :- Ram Autar

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

Counsel for Applicant :- Anu Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.
2. The present application under Section 482 Cr.P.C. read with Section 528 Bharatiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") has been filed for the following main relief:-

"(a) set aside the judgment and order dated 28.06.2024 passed in Criminal Revision No.274 of 2023 (State of U.P. vs. Ramautar) passed by Court of Session Judge, Hardoi as contained in Annexure No.1 to this A 482 petition."

3. For the purposes of interim protection and entertaining the present applicant under Section 482 Cr.P.C. read with Section 528 B.N.S.S., it is stated that vide order dated 05.06.2023 passed on an application dated 16.05.2023 the Chief Judicial Magistrate (in short , Magistrate') allowed the application under Section 311 Cr.P.C. filed by the prosecution with the condition to the effect that if on the date fixed witness namely, Virendra Kumar Sharma, Ramsewak Hukum Singh and Dr. Ramnarayan could not be produced for examination then in that eventuality the opportunity to lead evidence would be closed and for the purposes of appearance of these witnesses,ailable warrants were issued. Operative portion of order dated 05.06.2023 referred above is extracted hereinunder :-

"उपर्युक्त तथ्यों के प्रकाश में अभियोजन का प्रार्थना पत्र इस शर्त पर स्वीकार किया जाता है कि यदि नियत तिथि पर साक्षीगण वीरेन्द्र कुमार शर्मा, रामसेवक हुकुम सिंह, डा० रामनारायण को साक्ष्य हेतु प्रस्तुत नहीं किया गया हो अभियोजन का साक्ष्य प्रस्तुत करने का अवसर समाप्त कर दिया जायेगा। साक्षीगण वीरेन्द्र कुमार शर्मा, रामसदक हुकुम सिंह व डा० रामनारायण जरिए जमानतीय वारण्ट तलब हो। पत्रावली वास्ते साक्ष्य दिनांक 02.8.2023 को पेश हो ।"

4. It is also stated that the aforesaid condition was imposed by the Magistrate after considering the fact that the matter is pending

since 2006 and several opportunities to produce the prosecution witnesses were given and ultimately the same was closed and the statement of the accused in terms of Section 313 Cr.P.C. was recorded on 03.12.2022 and matter was listed for final argument on 12.02.2022 as also that the accused applicant is a senior citizen aged about 69 years.

5. It is also stated that the case was listed on 02.08.2023 and despite of the conditional order dated 05.06.2023 the prosecution failed to produce the witnesses and thereafter the Magistrate closed the prosecution evidence and fixed the case for 17.08.2023 for recording statement in terms of Section 313 Cr.P.C. Order dated 02.8.2023 reads as under.

"पत्रावली पेश हुई। पुकार पर अभियुक्त रामऔतार मय अधिवक्ता हाजिर।

पत्रावली शेष साक्ष्य हेतु नियत है, किन्तु अभियोजन की ओर से कोई साक्षी उपस्थित नहीं है। शेष साक्षीगण के सम्बन्ध में विद्वान अभियोजन अधिकारी की ओर से साक्ष्य हेतु कोई मोहलत प्रार्थना पत्र भी प्रस्तुत नहीं किया गया है।

पत्रावली के अनुशीलन से स्पष्ट होता है कि दिनांक 23.08.2022 को अभियोजन के साक्ष्य का अवसर समाप्त किया गया है।

अभियोजन की ओर से प्रस्तुत प्रार्थना पत्र दिनांकित 16.05.2023 अन्तर्गत धारा 311 पर न्यायालय द्वारा सर्शित अवसर प्रदान किया गया, किन्तु उसके पश्चात कोई साक्षी उपस्थित नहीं हुआ।

बार बार अवसर दिये जाने के उपरान्त भी शेष साक्षी पेश नहीं किया गया। चूँकि प्रकरण वर्ष 2007 का है तथा अभियुक्त लगातार न्यायालय में उपस्थित आ रहा हैं, किन्तु उसके पश्चात भी अभियोजन पक्ष द्वारा शेष साक्षीगण को न्यायालय में प्रस्तुत नहीं किया गया है तथा वाद की कार्यवाही अनावश्यक रूप से बिलम्बित हो रही है। मामले के तथ्य एवं परिस्थितियों को दृष्टिगत रखते हुए अभियोजन के साक्ष्य का अवसर समाप्त करते हुए पत्रावली बयान अन्तर्गत धारा 313 दं०प्र०सं० हेतु नियत किया जाना न्यायोचित प्रतीत होता है।

आदेश

अभियोजन के साक्ष्य का अवसर समाप्त किया जाता है। पत्रावली वास्ते बयान अन्तर्गत धारा 313 दं०प्र०सं० हेतु दिनांक 17.08.2023 को पेश हो।"

6. It is further stated that the order dated 02.08.2023 was challenged by the prosecution by means of Criminal Revision No.274 of 2003, (State of UP. through D.G.C. (Criminal), Hardoi Vs. Ramautar) and the Sessions Judge, Hardoi/Revisional Court set aside the order dated 02.08.2023. The relevant portion of the order dated 28.06.2023 reads as under :-

"From the perusal of the record, it appears that the learned court below vide order dated 05.06.2023 issued bailable warrants to witnesses

Virendra Kumar Sharma, Ramsevak, Hukum Singh and Dr. Ramnarayan but in the date of 02.08.2023 without ensuring the service of the summons to the witnesses closed the opportunity of adduce evidence on the ground that Prosecution Officer has not submitted any adjournment application for adducing evidence. In view of the above fact, this revision is liable to be allowed.

Order

This criminal revision is allowed. The impugned order dated 02.08.2023 is set aside. The court below is directed to proceed in accordance with law. So far as non-payment of pension to the opposite party is concerned. It is open for the opposite party to seek appropriate legal remedy or submit appropriate representation to the authorities concerned. It is not within the domain of this revision before pass an order for payment of provisional pension."

7. The order of Revisional Court dated 28.06.2024 has been challenged on the ground that the basic order dated 05.06.2023 was not assailed in the Revision, as such interference is required.

8. Ms. Nikita Mishra, learned A.G.A. opposed the present application.

9. It is stated by learned A.G.A. that there was no occasion to challenge the order dated 05.06.2023 as it is the order dated 02.08.2023, which is affecting the rights of the prosecution and this order dated 02.08.2023 passed by the Magistrate is not in consonance with the earlier order dated 05.06.2023 whereby for the purposes of appearance of witnesses of prosecution, bailable warrants were issued, but while passing the order dated 02.08.2023 the Magistrate failed to consider the fact as to whether the bailable warrants were served or not and, therefore, the Revisional Court interfered in the order and remanded the matter back. Thus, the order dated 28.06.2024 is just and proper.

10. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

11. From a perusal of the order dated 02.08.2023, interfered by the Revisional Court vide order dated 28.06.2024, it is apparent that no finding was recorded by the Magistrate in relation to service of bailable warrant which were issued in terms of earlier order dated 05.06.2023 whereby the opportunity was given to prosecution to lead the evidence and perusal of the order dated 28.06.2024 indicates that the Revisional Court interfered in the order dated

02.08.2023 on this aspect of the case.

12. Accordingly, this Court finds that the order dated 28.06.2024 is just and proper and no interference is required. In this view of the matter this application has no force and the same is hereby **rejected**.

13. Before parting, considering the period of pendency of the case against the applicant, i.e. about 17-18 years as also that the appellant on account of non-payment of provisional pension the applicant is in financial crunch as also the age of the accused-applicant, i.e. about 69 years, this Court directs the Magistrate to conclude the proceeding most expeditiously, if possible and if there is no other legal impediment, within a period of six months.

Order Date :- 20.11.2024

Anand/-