

Court No. - 14

Case :- APPLICATION U/S 482 No. - 11561 of 2024

Applicant :- Sanjay Pratap Singh

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

Counsel for Applicant :- Satendra Kumar Singh, Paresh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. In view of the order, which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

3. The present application under Section 482 Cr.P.C. has been filed by the applicant for quashing the orders dated 03.09.2024 and 07.11.2024 passed in Misc. Case No.6412 of 2012 titled Gopal Auto Finance Ltd. vs. Sanjay Pratap Singh, under Section 138 N.I. Act, 1881, Police Station Mahanagar, District Lucknow, pending in the court of learned Special Additional Chief Judicial Magistrate-V.

4. Submission of learned counsel for the applicant is that, in fact, the application moved by the applicant 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 has also submitted that the impugned orders are palpably illegal insofar as it does not disclose application of judicial mind, therefore, the same deserves to be quashed.

5. Learned counsel for the applicant has placed reliance on the judgment rendered by Hon'ble the Apex Court in **V. N. Patil vs. K. Niranjan Kumar and others**, reported in **(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".

6. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that the impugned orders have rightly been passed by the learned trial court. No illegality or irregularity exists in the impugned orders. therefore, the instant application 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. He has further submitted that it is the prerogative of the prosecution in view of Section 231 of the Cr.P.C. to choose as to which witness does it want to produce. It is no more *res*

integra that prosecution cannot be compelled to produce a particular witness as the same lies its discretionary jurisdiction to choose as to who should be produced to prove its case beyond reasonable doubt. It is always open that in case non production of any witness falls in the category of withholding the witness in view of Section 114(g) of the Indian Evidence Act, 1872, the trial court is always at liberty to draw adverse inference against the prosecution for withholding any such witness who, otherwise, in the consideration of court, was necessary to be produced.

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

8. 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.**"

(emphasis supplied)

9. 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."

10. Having regard to the facts and circumstances of this case, this Court does not find any illegality or irregularity in the impugned orders dated 03.09.2024 and 07.11.2024 and the same is not an abuse of process of this Court also, therefore,

the same cannot be quashed.

11. However, it is needless to mention that while concluding the trial, in case, the learned trial court finds that recall of P.W.-1 and P.W.-2 is necessary for the just decision of the case, in that eventuality, the learned trial court shall be at liberty to take recourse of provisions contained in later part of Section 311 Cr.P.C. without being influenced by any observation made hereinabove, in accordance with law, with a view to impart justice.

12. With the aforesaid observations/ directions, the instant application is finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 18.12.2024
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