



HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 154 of 2025

18 March, 2025

Shanku Saini Petitioner

Versus

State Of Uttarakhand and another Respondents

Presence:-

Mr. Vikas Bahuguna, learned counsel for the petitioner/accused.

Mr. Pratiroop Pande, learned A.G.A. for the State.

Mr. Ashutosh Thakral, learned counsel for respondent
no.2/complainant/ PW2 through Video Conferencing.

Hon'ble Vivek Bharti Sharma, J.

Present petition is filed under Section 528 B.N.S.S. to quash to impugned order dated 04.01.2025 passed by learned court of Additional Chief Judicial Magistrate, Rishikesh District Dehradun in C.G. No. 906 of 2023, whereby the application of the petitioner under Section 311 Cr.P.C. to cross-examine PW2, namely, Shrutant (respondent no.2/complainant herein) was dismissed.

2. Counsel for the petitioner/accused would submit that respondent no.2/complainant/PW2 lodged an F.I.R. against the petitioner/accused with the allegation that the petitioner/accused, who was Branch Manager and



one Vishal Kumar, who was Cashier at relevant point of time have committed financial irregularities; that, on the basis of said F.I.R., investigation was conducted and after completion of investigation, the Investigating Officer submitted charge sheet under Sections 120-B, 409 and 420 I.P.C. against the present petitioner/accused; that, thereafter, the cognizance was taken by the concerned Magistrate; that, the date for cross examination of PW2/complainant was fixed but the counsel for the petitioner/accused could not appear before the trial court for cross examination of PW2/complainant; thereafter, the Magistrate closed the opportunity of the petitioner/accused for cross examination of PW2/complainant.

He would further submit that the petitioner/accused filed an application under Section 311 Cr.P.C. (*the criminal procedure then was*) before the trial court with the prayer that the petitioner/accused be permitted to cross-examine the PW2/complainant, which was dismissed by learned trial court vide order dated 04.01.2025; that, the impugned order dated 04.01.2025 is unsustainable in the eyes of law as the trial court erred in law in dismissing the application of the petitioner/accused under Section 311 Cr.P.C..

3. *Per Contra*, learned counsel for



PW2/complainant would vehemently oppose the submission made by counsel for the petitioner/accused and would submit that learned Trial Court has rightly dismissed the application filed by the petitioner/accused under Section 311 of Cr.P.C.; that, ample opportunity to cross-examine the PW2/complainant was granted by the trial court to the petitioner/accused.

He would further submit that it is wrong on the part of the petitioner/accused that he could not cross-examine the PW2/complainant as he had cross-examined the PW2/complainant on two occasion but on the final date fixed by the trial court for further cross-examination of the PW2/complainant, the counsel for the petitioner/accused absented himself and also no application for adjournment for cross-examination of PW2/complainant was moved on his behalf.

4. Learned counsel for PW2/complainant would further submit that the order sheet of the trial court reflects that two counsels, namely, Mr. Rajesh Agarwal and Mr. Vipul Sharma were engaged by the petitioner/accused but none of them sought any adjournment on the date fixed for examination of the PW2/complainant, therefore, the trial court rightly rejected the application of the petitioner/accused for re-summoning the PW2/complainant for further



cross-examination.

He would further submit that there are difficulties with the PW2/complainant to physically appear before the Court; that, PW2/complainant is on leave for two years for the reason that the PW2/complainant is currently pursuing a course in Vedic Yoga, Mediation and Philosophy from Bhartana, Jind, Harayana and the said course is an in-house programme, therefore, the PW2/complainant is residing at the accommodation provided by the Centre, thus, he is unable to attend the trial court for his cross-examination.

5. On the other hand, learned counsel for the State would submit that there is the tendency in the trial court to seek the adjournment unnecessarily and not to cross examine the witnesses when the witness is present in the court and this should be dealt with adequately to discourage this tendency.

6. To this, counsel for the petitioner/accused would submit that the trial court erred in dismissing the application filed under Section 311 Cr.P.C., as the dismissal is against the principles of justice and fairness; that, Section 311 Cr.P.C. empowers the court to summon any material witness or examine any person present in the court, if his/her evidence



appears essential for the just decision of the case; that, the evidence of PW2/complainant is necessary for proper adjudication of the case.

7. Perused the record in the light of above submissions made by counsel for the parties.

8. In the present case, perusal of the record would reveal that effective opportunities for cross examination of PW2/complainant were given to the petitioner/accused and when the petitioner/accused and his counsel failed to cross-examine the PW2/complainant then the trial court closed cross examination of PW2/complainant. Moreover, perusal of application would show that it is not stated what vital question were needed to be asked.

However, in the interest of justice, this Court is of the considered view that the opportunity to cross-examine the PW2/complainant through Video Conferencing be given to the petitioner/accused for proper adjudication of the case, albeit, on the cost of ₹10,000/- to be deposited by the petitioner/accused directly in the bank account of PW2/Shrutant-complainant within one week from the date of intimation of the information to the petitioner/accused regarding the details of the bank account of PW2/complainant including name of the Bank, Account number, Branch



2025:UHC:1872

name, IF.S.C. Code from the counsel of the PW2/complainant.

8. The concerned trial court may request the civil court Jind, Haryana to appoint the Coordinator as per Video conferencing Rules wherefor all the expenses shall be borne by the petitioner/accused. The trial court may send the Special Messenger to the court concerned, if necessary.

9. Accordingly, the present petition is allowed. The impugned order dated 04.01.2025 is hereby set aside subject to the payment of the cost of ₹10,000/- to PW2/complainant. If the amount of cost is not paid to the PW2/complainant by the petitioner/accused within stipulated period then the opportunity for cross-examination of PW2/complainant will not be given to the petitioner/accused.

10. On the query of this Court, learned counsel for the parties would submit that the date fixed before the trial court is 29.03.2025, therefore, the petitioner/accused is directed to appear before the trial court on 29.03.2025.

(Vivek Bharti Sharma, J.)
18.03.2025

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