

Neutral Citation No. - 2025:AHC:144868

Reserved on : 07.08.2025

Delivered on : 22.08.2025

Court No. - 80

Case :- APPLICATION U/S 528 BNSS No. - 5536 of 2025

Applicant :- Pradeep Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Anurag Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra,J.

1. Heard Mr. Anurag Dubey, the learned counsel for applicant and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. Applicant-Pradeep Kumar, who is a named as well as charge sheeted accused and facing trial before Court below, has approached this Court by means of present application under Section 528 BNSS with the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned judgment and order dated 21.10.2024 passed by the learned Session Judge, Mainpuri in Session Trail No. 43 of 2022 (State Vs Pradeep and Others) arising out of case crime no. 240 of 2021 U/S 147, 148, 149, 307, 302, 504 I.P.C., police station Bewar district Mainpuri

It is further prayed that that this Hon'ble Court may graciously be pleased to direct the learned court below to recall the P.W.-1 for his examination, during pendency of the cross present application under section 528 B.N.S.S. before this Hon'ble Court, so the justice be done, and/or pass such other and further order which this Hon'ble

Court may deem fit and proper circumstances of the case."

4. Record shows that in respect of an incident, which is alleged to have occurred on 26.05.2021, a delayed FIR dated 27.05.2021 was lodged by first informant-opposite party-2 (Vipin Singh) and was registered as Case Crime No. 0240 of 2021, under Sections 147, 149, 323, 336, 307, 302, 504 and 506 IPC, Police Station-Bewar, District-Mainpuri. In the aforesaid FIR, 5 persons namely (1) Kuldeep, (2) Pradeep (applicant herein), (3) Sandeep, (4) Karnind and (5) Rajendra Singh have been nominated as named accused.

5. After completion of investigation of aforementioned case crime number, Investigating Officer submitted the charge sheet/police report in term of Section 173(2) Cr.P.C. Ultimately, the trial of charge sheeted accused commenced before Court below by way of Sessions Trial No. 43 of 2022 (State Vs. Pradeep and Others), now pending in the Court of Sessions Judge, Mainpuri.

6. During course of trial, Rakesh Singh (son of first informant) deposed before Court below as PW-1. His statement-in-chief commenced from 19.05.2022 and his examination-in-chief was last recorded on 21.09.2022.

7. After expiry of a period of 2 years and one month from the date, the deposition of PW-1 was last recorded, an application dated 21.10.2024 (purported to be under Sections 231 and 311 Cr.P.C.) was filed by the accused before Court below that permission be granted to put certain questions to the PW-1 as the same could not be put to PW-1 previously. The questions proposed to be put to the witnesses were duly mentioned in the application and are as under;-

“1. घटना के समय आप क्या काम करते थे?

2. आप जो काम करते थे, घटना वाले दिन वह काम किया था?

बाकी प्रश्न साक्षी द्वारा अपना काम बताने पर।”

The relevancy of the said questions was sought to be justified from

the fact that the answer to the said questions will prove the presence of PW-1 at the time and place of occurrence.

8. Aforementioned application filed by accused before Court below came to be rejected, vide order dated 21.10.2024 passed by the Sessions Judge, Mainpuri.

9. Thus feeling aggrieved by the order dated 21.10.2024 referred to above, accused Pradeep Kumar has now approached this Court by means of present application under Section 528 BNSS.

10. Mr. Anurag Dubey, the learned counsel for applicant submits that the order impugned in present application is manifestly illegal and therefore, the same is liable to be quashed by this Court. According to the learned counsel for applicant, the questions proposed to be put to the witnesses were crucial in the facts and circumstances of the case as the answers to the same shall decide the credibility and reliability of PW-1 as an eye witness of the occurrence. It was thus urged by the learned counsel for applicant that in view of aforesaid, Court below ought to have allowed the application filed by applicant. Reference was then made to the judgment of Supreme Court in **Varsha Garg Vs. State of Madhya Pradesh & Others, 2022 SCC OnLine SC 986** and on basis thereof, it was contended by the learned counsel for applicant that since the trial before Court below is the trial of accused himself, therefore, such a trial should be a free and fair trial. Section 311 Cr.P.C. is an enabling provision as it enables the Court to find out the truth. The same is also the object of the trial. Therefore, there cannot be any delay in filing an application under Section 311 Cr.P.C. It is on account of above that no limitation is provided for filing an application under Section 311 Cr.P.C. Moreover, in case, the said application was allowed by Court below then in that eventuality, no prejudice can be said to be caused to either of the parties. On the above premise, the learned counsel for applicant thus submitted that the order impugned cannot be sustained and therefore, liable to be quashed by this

Court.

11. Per contra, the learned A.G.A. representing State-opposite party-1 has vehemently opposed the present application. Learned A.G.A. submits that the order impugned in present application is perfectly just and legal and therefore, not liable to be interfered with by this Court. According to the learned A.G.A., the order impugned has been challenged by only one of the accused. However, the other co-accused have not been impleaded as party respondents. As such, the present application is liable to be dismissed by this Court on aforesaid ground. To buttress his submission, the learned A.G.A. has relied upon the judgment of Supreme Court in **Homi Rajvansh Vs. State of Maharashtra and Others, (2014) 12 SCC 556**.

12. Learned A.G.A. then invited the attention of Court to the order impugned. With reference to the same, the learned A.G.A. submitted that Court below has rejected the application filed by applicant on the finding that PW-1 in his examination-in-chief before Court below has categorically stated that he is a labourer by profession and on the date of occurrence, he was at home. As such, the answer to the questions proposed to be put to the accused have already been given. As such, there is no bona-fide on the part of accused-applicant in filing the application dated 21.10.2024.

13. Learned A.G.A. further contended that the finding returned by Court below in the order impugned as noted above has not been challenged specifically nor the same could be dislodged as being illegal, perverse or erroneous. It is well settled that if the findings cannot be dislodged, the conclusion cannot be altered. As such, no interference is warranted by this court in present application.

14. Having heard the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and upon perusal of record, this Court finds that the arguments raised by the learned counsel for applicant in support of this

application appear to be attractive at the first flush but are devoid of substance upon scrutiny. They are fanciful but are not borne out from the record. The Apex Court in the case of **Raja Ram Prasad Yadav Vs. State of Bihar and another (2013) 14 SCC 461**, has laid down the parameters in paragraphs 17 to 17.14 of the report, which are required to be observed while deciding an application under Section 311 Cr.P.C./348 BNSS. Accordingly, paragraphs 17 to 17.14 of the aforesaid report is extracted herein under:-

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just

decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. 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.”

15. When the said parameters are applied to the present case and also the findings returned by Court below, it is apparent that no bona-fide can be attached to the accused/applicant in filing the aforementioned application.

Prima-facie the application dated 21.10.2024 appears to have been engineered only to delay the conclusion of trial. As such, neither any illegality has been committed by Court below in passing the order impugned nor a jurisdictional error has been committed by Court below in rejecting the application under Section 311 Cr.P.C. filed by accused/applicant.

16. In view of the discussion made above, the present application fails and is liable to be dismissed.

17. It is, accordingly, **dismissed**.

Order Date :- 22.08.2025

Vinay