

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Criminal Misc. Application No. 1307 of 2023

Dr. Apoorva Kumar Mandal

.... Applicant

Versus

State of Uttarakhand and Another Respondents

Presence:-

Mr. Amit Satyawali, learned counsel holding brief of Mr. Vikas Anand, learned counsel for the applicant.

Mr. Sandeep Sharma, learned A.G.A. assisted by Mrs. Rangoli Purohit, learned Brief Holder for the State.

Hon'ble Siddhartha Sah, J. (Oral)

By means of this Application under Section 482 of the Cr.P.C., the applicant has sought quashing of the order dated 29.04.2023, passed by learned IIIrd Additional District and Sessions Judge, Rudrapur, District Udham Singh Nagar in Sessions Trial No.221 of 2017, State Vs Dr. Apoorva Kumar Mandal and to further direct the learned Trial Court to recall the respondent no.6 for the purpose of further cross-examination in Sessions Trial No.221 of 2017, State Vs Dr. Apoorva Kumar Mandal.

2. Notice was served to the respondent no.2 and as per service report dated 15.05.2026, the respondent no.2 has been served personally, however, none has put in appearance.

3. In such an eventuality, it would thus indicate that the respondent no.2 is duly noticed, however, she has chosen not to contest the matter.

4. Facts of the case are that FIR No. 18 of 2017 dated 16.01.2017 under Sections 304 of the IPC was registered at Police Station Transit Camp, District Udham Singh Nagar against the applicant and subsequently charge-sheet was filed which led to the registration of the Sessions Trial No. 221 of 2017, State Vs. Dr. Apoorva Kumar Mandal.

5. The examination-in-chief of PW6 Shankar Ram was recorded on 09.01.2023, however, the matter was fixed on 28.02.2023 for the purposes of cross-examination of the said witness, but the said witness could not be cross-examined on the said date, as such, the learned Trial Court closed the opportunity to cross-examine the said witness.

6. It is further stated in the affidavit in support of the application under Section 482 of the Cr.P.C. that when the matter was fixed for cross-examination on 28.02.2023, the applicant could not contact counsel for the applicant, namely Smt. Pooja Sharma Goswami, who withdrew her vakalatnama from the case due to which, the said witness PW6, who was present on 28.02.2023 before the Trial Court for his deposition, could not be cross examined by anyone.

7. It is further mentioned in the affidavit that the Trial Court without considering the situation at hand, passed an order dated 28.02.2023 and the opportunity to the applicant to cross-examine the said witness was closed by the Trial Court.

8. The applicant filed an application dated 03.03.2023 under Section 311 of the Cr.P.C. and prayed

to recall PW6 SI Shankar Ram for adjudication of the case since he was an important witness of the case.

9. The Trial Court passed an order dated 29.04.2023, whereby the application filed by the applicant under Section 311 of the Cr.P.C. was rejected on the ground that the applicant failed to move an application for engaging a new counsel and was intending to delay the trial.

10. It is submitted on behalf of the applicant that the examination-in-chief of the witness, i.e. PW6 was recorded on 09.01.2023, however, the cross-examination of the said witness could not be recorded on the said date since no time was left, however, the cross-examination was deferred to the next date i.e. 28.02.2023, but the learned Trial Court closed the opportunity of cross-examination of PW6 on the very next date, however, the applicant did not file any application for adjournment which could show his intention to delay the trial.

11. It is further stated in the affidavit that the Trial Court closed the opportunity of the applicant to cross examine the PW6, however, admittedly, the Trial Court had observed that the counsel for the applicant had withdrawn her vakalatnama on the said date which shows that on 28.02.2023, there was technically no counsel appearing on behalf of the applicant, as such, the learned Court below instead of providing an Amicus Curiae to the applicant, closed the opportunity to cross-examine on the ground that the applicant had failed to file any application for engaging a new counsel and was intending to delay the trial, as such, the learned Trial Court committed a manifest error of law by not providing a single opportunity to the applicant to defend his case.

12. In the aforesaid background, the learned counsel for the applicant would submit that if one opportunity is granted to the applicant / accused to cross-examine PW6, he would avail the same on the very same day and would not seek any adjournment. He would further submit that the rejection of the application under Section 311 of the Cr.P.C. would tantamount to depriving him of his right to cross-examine PW6, who is an important witness of the case.

13. Learned counsel for the State would submit that in the eventuality, the counsel for the applicant in the Trial Court cross-examines the PW6 on a single date, there would be no objection to the same and he would further submit that on the date so fixed by the Trial Court for cross-examination of PW6, no adjournment on any ground whatsoever would be granted by the Trial Court to the applicant.

14. The ordersheet of the present case reveals that vide order dated 04.07.2023, the further proceedings of Sessions Trial No. 221 of 2017, State Vs. Dr. Apoorva Kumar Mandal, pending consideration before the Court of IIIrd Additional District and Sessions Judge, Rudrapur, District Udham Singh Nagar have been kept in abeyance. No useful purpose would be served by keeping this Criminal Misc. Application under Section 482 of the Cr.P.C. pending and the proceedings of the Trial Court also kept pending.

15. In view of the undertaking given by the learned counsel for the applicant before this Court that in case one last opportunity is granted to the applicant's counsel in the Trial Court to cross-examine PW6 on the same date, he would not seek any adjournment which is

also not opposed by Mr. Sandeep Sharma, learned A.G.A. for the State, hence, in such eventuality, the instant Criminal Misc. Application under Section 482 of the Cr.P.C. deserves to be allowed.

16. The impugned order dated 29.04.2023, passed by learned IIIrd Additional District and Sessions Judge, Rudrapur, District Udham Singh Nagar in Sessions Trial No.221 of 2017, State Vs Dr. Apoorva Kumar Mandal is hereby quashed and the applicant is granted one opportunity to cross-examine the PW6 on the next date fixed. The Trial Court is further requested to issue summons to PW6 for the next date fixed so that the witness may be present and be cross-examined by the counsel for the applicant. It is further clarified that no adjournment whatsoever shall be granted to the applicant/accused for said cross-examination and the cross-examination shall be commenced and concluded on the same day.

17. With the aforesaid observations, the C-482 Application is disposed of.

(Siddhartha Sah, J.)
12.06.2026

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