

Court No. - 80

WWW.LIVELAW.IN

Case :- APPLICATION U/S 482 No. - 1427 of 2022

Applicant :- Sunil @ Moni And Another

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

Counsel for Applicant :- Ronak Chaturvedi

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

Heard learned counsel for the applicants and learned Additional Government Advocate representing the State of U.P.

By means of this application under Section 482 of the Code of Criminal Procedure, the applicants have invoked the inherent jurisdiction of this Court for quashing of the order dated 31.8.2021 passed by the Additional Sessions Judge, FTC, district Meerut in Sessions Trial No. 1046 of 2014 (State of U.P. Vs. Sunil alias Moni and another) arising out of Case Crime No. 680 of 2013, under Sections 498-A, 323, 504, 506, 376 IPC and Section 3/4 of the Dowry Prohibition Act, PS T.P. Nagar, district Meerut.

In short compass, the facts giving rise to the present application are that a first information report was lodged by the first informant Smt. Kaushal at 21.12.2013 at 1.30 PM arraigning therein as many as seven accused persons including her husband under Section 498-A, 323, 504, 506, 376 IPC and 3/4 of Dowry Prohibition inter alia with the allegations that her marriage was solemnized with Sunil alias Moni on 11.7.2013 and as her husband and in-laws were not satisfied with the dowry, they used to pressurize her for bringing additional dowry. The report further indicates that on 22.10.2013 her husband Sunil alias Moni and his brother-in-law Ravindra in an inebriated condition barged into her room and forcibly committed rape on her. After investigation, the charge sheet was submitted, cognizance taken and trial commenced.

During the trial, the examination-in-chief of opposite party No. 2 was done on 07.2.2015. Thereafter, her cross-examination was done on 07.2.2015, 18.5.2018, 11.10.2018. On 14.4.2019,

when the case was listed for further cross-examination, but as the advocate could not cross-examine the victim, the opportunity to cross-examine the victim was closed. Thereafter, the applicants moved an application for recalling the witness PW-1 to cross-examine, but the same has been rejected by the impugned order dated 31.8.2021, which is under challenge in this application.

The main substratum of argument of learned counsel for the applicants is that due to Covid restriction, learned counsel appearing on behalf of the accused could not cross-examine the witness. It is further submitted by the learned counsel for the applicants that both applicant No. 1 (husband) and opposite party No. 2 (wife) have mutually filed divorce petition, which has been allowed. It is also submitted that fair opportunity of cross-examination is legal right of the accused, therefore, not providing the opportunity of cross-examination serious prejudice will be caused to the applicants and they will suffer great irreparable loss and injury, therefore, impugned order dated 31.8.2021 is liable to be quashed.

Per contra, learned AGA rebutted the aforesaid submissions of learned counsel for the applicants by submitting that the trial court while passing the impugned order dated 31.8.2021 has recorded specific finding that applicants have intentionally not cross-examined the witness PW-1 and the possibility that accused wants to pressurize the victim cannot be ruled out. Therefore, the order dated 31.8.2021 is not liable to be interfered with and instant application filed by the applicants is liable to be dismissed.

After having heard the arguments of learned counsel for the parties, this Court feels that there is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the cross-examination of witnesses. The accused, who are charged with a serious offence, must not be stripped of his valuable right of a fair and impartial trial because it would be negation of concept of due process of law. Regardless of the merits of the case, the Court has not only to look into the case

WWW.LIVELAW.IN
of the prosecution, but has also to keep in mind the defence version.

In view of the above, this Court is of the opinion that order dated 31.8.2021 is liable to be quashed and applicants are entitled to one opportunity for cross-examination.

Accordingly, the impugned order dated 31.8.2021 is quashed.

It is directed that if the applicants file a certified copy of this order within three weeks from today before the court concerned along with a draft of Rs. 25,000/- in favour of opposite party No. 2, Smt. Kaushal, the court below shall fix a suitable date in the matter and on the said date the applicants will be given an opportunity to cross-examine PW-1. On appearance of PW-1, Smt. Kaushal for cross-examination, the draft shall be handed over to her.

With the aforesaid observations, this application is disposed of.

Order Date :- 23.2.2022

Ishrat