
(2008) 03 AHC CK 0165

In the Allahabad High Court

Case No : Criminal Miscellaneous Transfer Application No. 240 of 2008

Devendra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 407
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2008) 03 AHC CK 0165

Hon'ble Judges : Barkat Ali Zaidi, J

Final Decision : Dismissed

Judgement

Barkat Ali Zaidi, J.—A prosecution witness named in first information report in a double murder case S.T. No. 47 of 1999 under sections 147, 148, 149, 307 and 302 I.P.C. Police Station Sihani Gate, District Ghaziabad, pending in the Court of IXth Addl. District & Sessions Judge, Ghaziabad has moved this application, seeking transfer of the case, from Court concerned.

2. I have heard Sri Nitin Gupta, advocate for the applicant and Mohd. Israil Siddiqui, Addl. Government Advocate for the State.

3. There are two grounds, on which transfer has been sought;

(i) That there was an error in the name of a witness which was pointed out to the Trial Court when the statement was read over to him but the Trial Court did not correct the statement as desired by the witness, and on an application given in that regard by the applicant, an order was passed, that final order will be passed at the time of argument.

4. This was not the right procedure because section 278 Cr.P.C. provides, correction after the statement has been read over to the witness. The order of the Judge postponing the matter at the time of argument was not correct and justified. He shall pass order immediately thereon, before listening to argument.

5. However, this cannot form ground for transfer because though there may be a technical error, it does not demonstrate any bias.

(ii) The second ground was that the witness had applied for summoning two other witness under section 311 Cr.P.C. who could depose about the occurrence, but the Court deferred decision thereon, till the argument.

6. This again is no ground for transfer because the Court has not rejected the application and has only deferred consideration thereon.

7. It may, however, be observed that a Court should always be willing to procure as much evidence as is available about the occurrence, and the approach should not be to shut out the evidence. There may be some useful information, coming forth which may provide significant clues.

8. We think the Court will pass orders on the application before listening the arguments.

9. With these observations, application for transfer is rejected.