
(2007) 05 AHC CK 0225

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 11831 of 2007

Dilshad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 31-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Evidence Act, 1872 — Section 138

Citation : (2007) 05 AHC CK 0225

Hon'ble Judges : R.K.Rastogi, J

Final Decision : Disposed Of

Judgement

R.K. Rastogi, J.—This is an application under Section 482, Cr.P.C. for quashing the order dated 3042005 passed by Addl. District and Sessions Judge (Special), Baghpat in S.T. No. 352 of 2001, State v. Smt. Haseena and Ors., under Section 307, I.P.C. Police Station Baraut District.

2. The facts relevant for disposal of this application are that the aforesaid Sessions Trial is pending against the accused applicant before the Court of Addl. District and Sessions Judge (Spl.) Baghpat and the prosecution evidence is going on. On 304 2007 the prosecution produced Dr. V.B. Bhatnagar as P.W. 8. His name was not mentioned in the chargesheet as a witness. Hence an objection was raised from the side of the accused applicant that he could not be examined without seeking permission of the Court. Then the A.D.G.C.(CrI) moved an application for permission to examine him. As per endorsement made by the Counsel for the accused applicant on the margin of this application he sought time to file written objection. However, learned Addl. Sessions Judge allowed that application on that very day without providing any such opportunity to the accused applicant. Aggrieved with that order, the accused applicant filed this application under Section 482, Cr.P.C.

3. I have heard the learned Counsel for the applicant as well as the learned A.G.A. for the State.

4. It is to be seen that the learned Presiding Officer of the Court has pointed out in his order that though the name of Dr. V.B. Bhatnagar is not mentioned in the list of witnesses, yet it was essential in the interest of justice to examine him since the operation of the injured was done in his presence, and the relevant record in regard to that operation had been filed before the Court, and, therefore, it was essential to examine him to prove that record. It is thus clear that the testimony of the above witness was relevant for just disposal of this case. It is true that no permission was sought by the prosecution for examining the above witness before producing him in the witness box and, when the learned Counsel for the accused applicant raised this objection, the prosecution moved an application for grant of permission. On that application, the learned Counsel for the accused applicant made an endorsement for granting time to file objection. The Presiding Officer instead of granting time for the said purpose, allowed the application for permission. It was submitted by the learned Counsel for the applicant that time to file objection should have been granted and thereafter this application should have been heard and so the aforesaid order of the Presiding Officer should be set aside and the application for permission should be disposed of after hearing his objection, and thereafter if the application is allowed, the above witness should be permitted to be examined. I do not agree with the above contention.

5. It is true that the name of Dr. V.B. Bhatnagar was not mentioned in the chargesheet and so it was essential for the prosecution to seek permission from the Court before examining him. But, he was produced without any such prior permission and during the course of his examination in chief, the above objection regarding permission was raised. Then an application for granting permission was moved mentioning the necessity to examine him. The witness who had come from outstation was present in the Court and his examination in chief had been partly recorded. Under these circumstances, the Presiding Officer of the Court did not commit any illegality by granting permission that very day. It is to be seen that it was for the prosecution to decide as to whether this witness was to be produced by them for proving a particular fact or not and if in the present case the prosecution wanted to prove the medical documents by examining Dr. V.B. Bhatnagar the main objection which the accused applicant could take was that he had not received a copy of his statement and so a copy of the statement should be furnished to him to make preparation for his cross-examination but in the present case since he was not named as witness and his statement under Section 161, Cr.P.C. had not been recorded, it was not possible to supply any copy of the earlier statement, and the copy could be supplied only after recording his examination in chief to enable the learned Counsel for the applicant to prepare for cross-examination of the witness. In this way, no prejudice has been caused to the accused by granting permission for recording Dr. V.B. Bhatnagar's examination. The prosecution shall now furnish a copy of that statement to the learned Counsel for the accused to enable him to prepare for cross-examination of the said witness and thereafter a date shall be fixed by the trial Court of

recording crossexamination of Dr. V.B. Bhatnagar and on that date the learned Counsel for the accused applicant shall crossexamine him.

6. Since the accused applicant had no prior knowledge about production of Dr. V.B Bhatnagar as witness nor of his statement hence if he is of the view that it is essential to further cross examine any witness already produced by the prosecution in the light of the statement of Dr. Bhatnagar, he may move an application for further crossexamining that particular witness specifying the questions which are to be put to that witness and if any such application is moved, the Presiding Officer of the Court may pass suitable orders thereon taking into consideration the relevancy of those question.

7. This application under Section 482, Cr. P.C is disposed of with these observations.