

**(2016) 07 AHC CK 0145**

**In the Allahabad High Court**

**Case No :** Criminal Misc. Application No. 17784 of 2016

Smt. Surya Kumari

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision :** 18-07-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482

**Citation :** (2016) 96 ACrC 721 : (2017) 1 ADJ 5

**Hon'ble Judges :** Harsh Kumar, J.

**Bench :** Single Bench

**Advocate :** Nirvikar Gupta, Advocate, for the Applicant; A.G.A, for the Opposite Parties

**Final Decision :** Disposed Off

## Judgement

Harsh Kumar, J.—Supplementary affidavit filed by applicant be taken on record.

2. The application under Section 482 Cr.P.C. has been filed for quashing the impugned order dated 6.8.2015, passed by Additional District and Sessions Judge, Court No. 10, Allahabad in S.T. No. 843 of 2006, whereby at the time of disposing of the application 70B of applicant under Section 311 Cr.P.C. for summoning the charge sheeted witness Ravi Shanker Sharma, the learned trial court holding that since the prosecution has not discharged the remaining witnesses after examining PW-1 to PW-7 and statement under Section 313 Cr.P.C. of accused persons has not been recorded as yet, directed the prosecution to examine the rest witnesses mentioned in charge sheet and for issuing summon to the remaining witnesses.

3. Learned counsel for the applicant contends that the impugned order is not in accordance with law; that on application 70B the trial court was required either to allow application and summon charge sheeted witness Ravi Shanker Sharma for evidence or to reject the application; that the order for summoning all the

remaining witnesses is wrong and appears to have been passed due to some anger against the applicant.

4. Per contra, learned AGA contends that in above case prosecution evidence has been completed long ago and after examination of PW-7 on 12.1.2011 case was fixed for recording statement of accused under Section 313 Cr.P.C.; that despite lapse of over five years after giving last opportunity on 18.5.2011, the accused persons are not co-operating with the trial and have not got their statement under Section 313 Cr.P.C. recorded as yet rather obstructing the progress of trial; that though the evidence of prosecution of witnesses of fact as well as formal witnesses has been completed more than five years ago, accused persons are delaying the disposal of trial either by moving one frivolous application after the other or by seeking exemption from appearance by any of them turn by turn; that since the note regarding discharge of other witnesses left to be mentioned on the order sheet so the trial court has passed the order for examination of remaining witnesses, if any; that the prosecution does not want to produce any witness except those who have already been produced as PW-1 to PW-7 and is not going to produce even, above Ravi Shanker Sharma, and may not be compelled to produce him; that above Ravi Shanker Sharma appears to have been won over by accused and so after a lapse of five years of completion of prosecution evidence, application for summoning him has been moved on the ground of engaging another counsel by accused and that earlier counsel did not go through the names of witnesses mentioned in charge sheet; that the applicant/accused if wants may produce Ravi Shanker Sharma as defence witness; that there is no illegality in impugned order and the same is not liable to be quashed; that the accused applicant is delaying disposal of trial of dowry death case.

5. Upon hearing learned counsel for the parties and perusal of record, I find that though there is no mention on the order sheet by the Government counsel of closing evidence or discharging the remaining charge sheeted witnesses since after examination of PW-1 to PW-7 case was listed for recording statement of accused under Section 313 Cr.P.C., it is not open even to the prosecution to produce any other witness, which fact has also been mentioned in para 2 of the objections 80B filed by A.D.G.C. (Criminal). In the circumstances, even in absence of any such endorsement, it was not just and proper in the interest of justice to pass order for summoning all the witnesses. The perusal of record shows that since the accused persons are delaying the disposal of trial so without considering the prayer made by the applicant in her application 70B the trial court appears to have passed the impugned order in haste, so that the accused/applicant by engaging another new counsel may not obstruct the trial. It is settled principle of law that prosecution is at liberty to produce as many as witnesses mentioned in the charge sheet and if the prosecution does not want to produce any witness mentioned in the charge sheet, it may not be compelled to produce as has been laid down by Apex Court in the case of *Hukum Singh v. State of Rajasthan* 2001(1) JIC 213 S.C. It is also pertinent to mention that the

ground for summoning a witness on engagement of new defence counsel or any mistake of earlier counsel, may not be a valid ground and such a witness may be summoned only if the evidence of such witness is essential of just decision. In such circumstances, I find that impugned order is wrong and incorrect and has been passed without assigning any reason and is liable to be quashed.

6. In view of the discussions made above, the impugned order dated 6.8.2015 is quashed. The trial court is directed to decide application 70B of applicant afresh after affording reasonable opportunity of hearing to the parties and further opportunity to A.D.G.C. (Criminal) to discharge any of the witnesses he wants to discharge, within one month. It is further made clear that the accused persons shall fully cooperate with the progress of trial and will remain present on each and every date fixed for recording their statements under Section 313 Cr.P.C. and in case any of them fails to appear or delays the disposal of trial in any other manner, the trial court shall be at liberty to pass necessary orders for cancellation of his or her bail and keep him or her under custody till conclusion of trial.

7. Application is disposed of accordingly.