
(2007) 08 AHC CK 0283
In the Allahabad High Court
Case No : Criminal M.A. No. 5065 of 2005

Umar Daraz

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 30-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2008) 2 ACR 1603

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

Bench : Single Bench

Advocate : A.A. Ansari, for the Appellant; Mukhtar Alam and M.A. Ansari and A.G.A, for the Respondent

Judgement

R.K. Rastogi, J.—This is an application u/s 482, Cr.P.C. for quashing the order dated 21.4.2005 passed by the Addl. Sessions Judge, Court No. 8, Saharanpur in S.T. No. 90/2005, State v. Umar Daraz and Ors.

2. The facts relevant for disposal of this application are that the aforesaid sessions trial is pending for hearing in the Court of Addl. Sessions Judge, Court No. 8, Saharanpur. Since Noman Khan the injured witness in the above case was ill and he was admitted in the hospital, an application was moved from the side of the prosecution for recording his statement on commission. This application was allowed by the learned Addl. Sessions Judge vide order dated 21.4.2005. Aggrieved with that order this application u/s 482, Cr. P.C. has been filed. The further proceedings of the case against the applicant only were stayed by Hon"ble K. N. Sinha, J. vide order dated 14.7.2007. However, it appears from perusal of the counter-affidavit that the statement of witness Noman Khan was partly recorded on Commission on 21.5.2005 by the C.J.M., Gautam Budha Nagar to whom the Commission was issued, and he was partly cross-examined by the learned Counsel for the accused, but the statement of the witness could not be concluded on that date and Anr. date was fixed for remaining cross-examination of the witness. However, before the remaining cross-examination

could take place, the proceedings of the case were stayed by this Court vide order dated 14.7.2005.

3. During the course of the arguments, I asked the learned Counsel for the parties about the present position of Noman Khan. Learned A.G.A. stated that now Noman Khan is completely hale and hearty and he is in a position to be cross-examined. Then I suggested the learned Counsel for the parties that since Noman Khan is now hale and hearty, he should be cross-examined in the Court, and the statement of Noman Khan which has already been recorded by the C.J.M. on Commission before passing of stay order by this Court in this case, may be taken on record, and the learned Counsel for the accused may thoroughly cross-examine the witness in the Court. Learned Counsel for both the parties agreed to this suggestion.

4. In view of above, there is no necessity to decide this application u/s 482, Cr. P.C. on merits and it is finally disposed of with this observation that the statement of Noman Khan recorded on Commission shall be taken on record and the prosecution shall now produce the witness Noman Khan for cross-examination in the Court and the learned Counsel for the accused Appellant shall be afforded an opportunity to cross-examine the witness in the Court. The interim stay order stands vacated.