

Pradeep Kumar GuptaA. Vs. the State of U.P.

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Court : Allahabad

Decided On : Jun-22-2010

Judge : Raj Mani Chauhan, J.

Acts : [Code of Criminal Procedure \(CrPC\) \(Cr.P.C.\), 1973](#) - Sections 397 (1) or 401 ; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 or 120- B ;

Appeal No. : Criminal Revision No. 238 of 2010.

Appellant : Pradeep Kumar GuptaA.

Respondent : The State of U.P.

Judgement :

1. Heard learned counsel for the revisionist on the point of admission and perused the impugned judgment and order. Learned A.G.A. agrees that the revision may be finally decided at the admission stage without issuing notice to the opposite party no. 2 (complainant).

2. This criminal revision under Section 397 (1)/401 Cr. P.C. has been moved by the accused against the judgment and order dated 7.6.2010, passed by the learned Additional District & Sessions Judge, Court No. 4, Hardoi in Sessions Trial No. 253 of 2007 (case crime no. 624/06); State Versus Pratap Singh & Others under Sections 302/120- B IPC, Police Station Kotwali Dehat, District Hardoi, by which the learned Additional District & Sessions Judge has rejected the application no. 289/B filed by the accused revisionist for taking the report dated 21.4.2010

prepared by the Government Medico Legal Expert on record in his defence.

3. The submission of learned counsel for the revisionist is that the case was fixed for argument while the accused had not closed their defence. On 7.6.2010, the accused moved an application for taking the report of Government Medico Legal Expert on record in their defence which has been rejected by the Trial Court only on the ground that the accused had been adopting dilatory tactics and was not cooperating in disposal of the trial. It was also observed that the report of Government Medico Legal Expert was not an evidence; rather it was simply an opinion. The accused has got valuable right of his defence. The door of defence cannot be shut by the Trial Court only on the ground that the accused had been adopting dilatory tactic without affording him last opportunity to lead his defence. In fact the accused is already in jail, he did not adopt any dilatory tactics. In case, the report to be filed by the accused is not taken on record, his defence will be highly prejudiced. The impugned order passed by the Trial Court is, therefore, improper and liable to be set aside. Learned A.G.A. although supported the Trial Court's order but learned A.G.A. submits that in case the Trial Court is directed to take the report of Government Medico Legal Expert filed by the accused on record, the accused be directed to cooperate with the trial without seeking unnecessary adjournment.

4. Considered the submissions of learned counsel for the revisionist and learned A.G.A. and gone through the impugned order. The accused has got valuable right to lead evidence in his defence which has been denied by the Trial Court only on the ground that he had been adopting dilatory tactics. This right of accused cannot be taken away unless he is allowed the last opportunity to adduce the defence evidence. The impugned order passed by the learned Additional Sessions Judge is improper and liable to be set aside. Learned counsel for the revisionist assures that the accused will not seek any unnecessary adjournment and will cooperate with the trial. The accused may be allowed one opportunity to adduce the defence evidence by way of filing the document and to examine any witness, if so required.

5. The revision is, therefore, allowed and the impugned order dated 07.06.2010 passed by the learned Additional District & Sessions Judge in Sessions Trial No.

253 of 2007 arising out of case crime no. 624/06 rejecting the application of the accused is set aside. The application filed by the accused for taking the report of Government Medico Legal Expert dated 21.4.2010 on record is allowed and the learned Additional Sessions Judge will take the report filed by the accused on record. He may summon any defence witness if so required and thereafter will proceed in accordance with law. It is, however, observed that the accused will cooperate with the trial without seeking any unnecessary adjournment.

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