

Court No. - 27

Case :- CRIMINAL REVISION No. - 296 of 2024

Revisionist :- Ashutosh Yadav

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko.
And Another

Counsel for Revisionist :- Girdhari Lal Yadav, Priyanka Pal, Satendra Kumar, Shivesh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Girdhari Lal Yadav, the learned counsel appearing for the revisionist and Sri Abhishek Kumar Singh, learned State counsel and perused the record.

2. By means of the instant revision filed under Section 397 Cr.P.C., the revisionist has assailed validity of the order dated 06.03.2024 passed by the learned Additional Sessions Judge, FTC-1, Lucknow in Sessions Trial No.183 of 2019 whereby an application filed by the revisionist under Section 311 Cr.P.C. for recalling P.W.-1 and P.W.-2 has been rejected.

3. In the affidavit filed in support of the application under Section 311 Cr.P.C., the applicant has stated that there are some contradictions between the statements given by P.W.-1 in her examination-in-chief and in her cross examination, which can only be clarified by reexamination of P.W.-1 and her father-P.W.2. Discrepancy in statements of witnesses is no ground for recall of the witnesses under Section 311 Cr.P.C.

4. In the impugned order dated 06.03.2024, the trial court has recorded contention of the revisionist that the marriage certificate filed by the prosecution mentions that the marriage was solemnized on 27.02.2015 in accordance with Hindu rites and rituals, as per which,

Kanyadan is an essential ritual. To ascertain this fact, reexamination of P.W.-2 is necessary.

5. Section 311 Cr.P.C. empowers the Court to summon any witness in case it is essential for a just decision of the case. The affidavit filed in support of the application under Section 311 Cr.P.C. merely states that the accused is desirous to re-examine P.W.-1 and her father as there are some discrepancies in the statement of P.W.-1 recorded during her examination-in-chief and her cross-examination. Discrepancies in the examination and cross examination of a witness do not give rise to a ground for recall of the witnesses and for calling another witnesses. Moreover, from the submissions made on behalf of the applicant before the trial court, it appears that the aforesaid witnesses are being sought to be examined to prove whether the ceremony of *Kanyadan* was performed or not.

6. Section 7 of the Hindu Marriage Act reads as under:-

“7. Ceremonies for a Hindu marriage.-

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptpadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.”

7. Thus, Hindu Marriage Act merely provides *saptpadi* as an essential ceremony of a Hindu marriage and it does not provide that the ceremony of *kanyadan* is essential for solemnization of a Hindu marriage. Whether the ceremony of *Kanyadan* was performed or not, would not be essential for the just decision of the case and, therefore, a witnesses cannot be summoned under Section 311 Cr.P.C. for proving this fact.

8. The learned counsel for the revisionist has relied on a decision of the Supreme Court in the case of **P. Sanjeeva Rao Vs State of A.P. : 2012 (7) SCC 56** wherein the Hon’ble Supreme Court has relied on a previous decision in the case of **Mohanlal Shamji Soni Vs Union of India & Anr: 1991 Supp1 SCC 271** wherein it was held that: -

“The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair-play and good sense appear to be the only safe guides and that only the requirements of justice command and examination of any person which would depend on the facts and circumstances of each case.”

9. There can be no denial of the fact that this Court has ample power to summon any witness under Section 311 Cr.P.C., the power cannot be exercised in a casual manner on the mere asking of a litigant. This power has to be exercised merely only when it is essential to summon a witness for a just decision of a case.

10. When the fact which is sought to be proved by recall of the witnesses is not material for just decision of the case, there is no illegality in the impugned order dated 06.03.2024 passed by the learned Additional Sessions Judge, FTC-1, Lucknow. The revision lacks merit and is hereby **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 22.03.2024
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