

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Revision No. 158 of 2004

1. Sabir S/o Salim	
2. Ajam S/o Sabir	
Both R/o village Nakibpur Gosipura	
P.s. Manglaur	
District HaridwarRevisionists
Versus	
State and two othersRespondents

Hon'ble J. C. S. Rawat, J.

Heard Sri Manish Arora learned counsel for the applicants and Sri G. S. Sandhu learned A.G.A.

This criminal revision under section 397, 401 of the Code of Criminal Procedure (for short 'Code') has been filed for quashing of the order dated 10.8.2004 passed by the Addl. District Judge-Ist, Haridwar in S.T. No.100/03 State Vs. Sabir and another.

Perusal of the record reveal that the trial is pending before the court below and five witnesses have been examined by the trial court. Thereafter, statement under section 313 of the Code was recorded and the case was fixed for arguments. On 26.3.2004 before recording the statement of the accused under section 313 Cr.P.C., Dr. Ashok Kumar (PW5) was produced as a prosecution witness and his examination in chief was recorded. The defence counsel did not cross-examine the witness inspite the opportunity given to him and ultimately his cross examination was closed by the trial court. Thereafter, revisionists moved an application under section 311 of the Code to recall Dr. Ashok Kumar (PW-5) and the same was allowed at the cost of Rs.900/- as expenses of the Dr.Ashok Kumar (PW5) and the trial court has also ordered to deposit Rs.900/- upto 5.4.2004. Thereafter, the case was fixed for 8.4.2004

but till then the revisionists failed to deposit the said amount. Later on, the revisionists moved an application to the effect that his application may be treated as dismissed as he is not able to deposit the said amount. Thereafter, the statement of the accused were recorded and the case was fixed for argument. Meanwhile, the revisionists moved again an application under section 311 of the Code in which it has been stated that they may be given an opportunity to cross examine Dr. Ashok Kumar and further stated that they were ready to deposit the said amount and the application was rejected on the ground that the proceedings of the trial was being delayed.

The learned trial Judge has erred in rejecting the application of the applicant. In the interest of justice and fair trial, the defence should have been allowed to cross examine the witness. In case, the doctor is not cross-examined by the defence after allowing the application to recall the witness on payment of the expenses, it will definitely prejudice the prosecution. In the peculiar circumstances of the case, the application of the defence should have been allowed.

In view of the above discussion, I am of view that the opportunity must have been given to the revisionists to cross examine the doctor. The trial court may fix the date for depositing the amount as ordered earlier so that Dr.Ashok Kumar (PW5) may be summoned. In case, the revisionists does not deposit the amount as directed by the trial court the application for recall shall forthwith stand rejected and in case the revisionists deposit the amount, the trial court will recall the witness in accordance with law.n The order dated 10.8.2004 is liable to be set aside.

In view of the above, revision is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 30.9.2004

Rawat