

Hon'ble Sharad Kumar Sharma, J.

Mr. Abhishek Verma, Advocate for the applicant.

Mr. V.K. Gemini, Deputy Advocate General for the State of Uttarakhand.

The applicant / accused is facing trial, being Session Trial No. 132 of 2015, State Vs. Jameel Ahmad Mansuri, for the offences triable under Sections 376 and 328 of the I.P.C., Police Station Kunda, District Udham Singh Nagar, which is pending before the 1st Additional District & Sessions Judge, Kashipur, District Udham Singh Nagar.

The incident which is being tried happens to be of 15th April, 2017. During the course of the trial, what is reflected is that PW6 Jitendra Singh Bisht was examined by Trial Court on 28.08.2018, however, later on, the applicant has filed an application under Section 311 of Cr.P.C. praying for that PW6 Jitendra Singh Bisht, who had appeared as a witness, may be summoned and be re-examined for cross examination. The reason, which has been assigned is that on the date fixed for examination of Jitendra Singh Bisht PW6 on 28.08.2018, the counsel for the present applicant had to go out somewhere due to which, PW6 could not be cross examined, hence, he would submit that there was no dereliction which is said to have been committed by the applicant and, thus, PW6 ought to have been re-summoned for cross examination by invoking Section 311 of the Cr.P.C.. The application came up for consideration before the Trial Court before 1st Additional District & Sessions Judge, Kashipur, District Udham Singh Nagar and the application under Section 311 Cr.P.C. has been rejected.

On considering the propriety of the application and the reason which has been assigned of not being cross examined PW6 on 28.08.2018, the Court has considered the ratio laid down by the judgments that the trial for an under Section 376 has to be decided on day-to-day basis and on the pretext that the counsel could not attend the proceedings on that particular date, could not be a reason to adjourn the proceedings of cross examination of witnesses who has not presented himself on the said date.

Section 311 Cr.P.C., in its simple language, uses the word “may” which means it is a wisdom to be exercised by the Court looking to the circumstances of the case and not a right of a party to summon a witness for re-examination. If a litigant to the proceedings and in particular the accused is not diligent and the excuse extended for unable to cross examine the witness on the given date, does not repose confidence to the Court. The said application cannot be sought to be enforced as to be a compulsive mandate of law. It is only an enabling provision which is made available to the Court to summon the witness considering the overall circumstances of the case.

Consequently, I do not find any merit in the C-482 Application. The same is dismissed.

(Sharad Kumar Sharma, J.)

Dated 28.09.2018

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