

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.224 of 2020

Mobeen and others

.....Petitioners

Versus

State of Uttarakhand and another

....Respondents

Present:

Mr. B.D. Pande and Mr. Rakshit Joshi, Advocates for the petitioner.

Mr. Lalit Miglani, A.G.A for the State.

Mr. Sanjay Kumar, Advocate for the respondent no.2.

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

The challenge in this petition is made to the order dated 04.12.2019, passed in Sessions Trial No. 57 of 2015, State Vs. Mobeen and others, by the court of 2nd Additional Sessions Judge, Kashipur, District Udham Singh Nagar (for short, "the case").

2. Heard learned counsel for the parties and perused the record.

3. The case is proceeding under Section 302, 342 IPC. After examination of PW2 Babli @ Payal, an application under Section 311 of the Code of Criminal Procedure, 1973 was filed by the petitioners, which was rejected by order

dated 19.01.2019 passed in the case. This order was challenged before this Court, in Criminal Misc. Application No. 2478 of 2019 ("the first petition"). The first petition was rejected on 08.11.2019. The Court had observed in its order that when the defence had not disclosed as to what questions were left to be asked, then there is no requirement to call a witness. Subsequent to it, another application under Section 311 of the Code has been filed by the petitioners on 13.11.2019. It was rejected by the impugned order dated 04.12.2019. In new application, the petitioners have given four questions that they propose to asked from PW2 Babli @ Payal.

4. At the time of arguments, learned counsel for the petitioners would submit that the petitioners propose to ask only question no.1, which is as hereunder:-

- (i) Whether the two miscreants had masked their face at the time of occurrence?

5. The Court invited the attention of the learned counsel for the petitioners to the statement of PW2 Babli @ Payal, when she has stated that when she switched on the light, she could see the faces of the miscreants.

6. At it, learned counsel for the petitioners would submit that it may also mean that the witness had seen the masked faces of the miscreants.

7. This would be too far stretching a plain statement. PW2 Babli @ Payal has categorically stated that she had seen the faces of two miscreants when she switched on the light. This she has stated in her statement recorded on 02.12.2016 and before that at Page No.2, PW2 Babli @ Payal has categorically stated that she identified the persons, who had entered in her house on the date of the incident. On the identification of the miscreants, PW2 Babli @ Payal has already been examined and cross examined.

8. A witness may be recalled for his examination under Section 311 of the Code, if his examination appears to be essential to the just decision of the case. In the instant case, what is proposed to be asked had already been replied by PW2 Babli @ Payal.

9. There is no occasion or reason to recall the PW2 Babli @ Payal. Therefore, The court below has rightly rejected the application. No interference is warranted in this case. Accordingly, the petition deserves to be dismissed.

10. The petition is dismissed.

(Ravindra Maithani, J.)

31.03.2022

Jitendra