

Prashant Dubey vs State Of U.P. Thru. Prin. Secy. Home Lko ... on 31 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

Neutral Citation No. - 2025:AHC-LK0:6721

Court No. - 30

Case :- CRIMINAL REVISION No. - 133 of 2025

Revisionist :- Prashant Dubey

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

Counsel for Revisionist :- Brij Bhushan Singh,Pranjal Apurva,Sandeep Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Om Prakash Shukla,J.

(1) Vakalatnama filed on behalf of the opposite party No.2 by Shri Rajesh Mishra, Advocate, is taken on record.

(2) Heard Shri Sandeep Kumar Mishra, learned Counsel for the revisionist, Shri Rajesh Mishra, learned Counsel for the opposite party No.2, learned A.G.A. for the State-opposite party No.1 and perused the material placed on record.

(3) This Criminal Revision under Section 438/442 of B.N.S.S., 2023 (corresponding Section 397/401 of Criminal Procedure Code, 1973) has been filed by the revisionist/accused, Prashant Dubey, against the order dated 10.01.2025 passed by learned Additional Sessions Judge, Fast Track Court, Gonda in Sessions Trial No. 308 of 2021 : State Vs. Prashant Dubey arising out of F.I.R. No.33 of 2021 registered under Sections 147, 148, 149, 302, 498-A of Indian Penal Code, 1860 and Section 3/4 of Dowry Prohibition Act, 1961, Police Station-Kotwali Nagar, District-Gonda, whereby application filed by the accused/revisionist under Section 310 Cr.P.C. (marked as Application No. 194 Kha 1) seeking narcotics test, has been rejected.

(4) Brief facts of the case are that complainant/respondent no.2 had lodged an F.I.R., bearing No. 33 of 2021, registered under Sections 147, 148, 149, 302, 498-A of Indian Penal Code, 1860 and Section 3/4 of Dowry Prohibition Act, 1961, Police Station-Kotwali Nagar, District-Gonda, against the revisionist and others, alleging therein that marriage of his sister was solemnized with Prashant Dubey (revisionist herein) and after marriage, revisionist and his family members used to harass his sister and demanding dowry and on many times, panchayat was also called. It has been alleged in the aforesaid F.I.R. that on 10.01.2021, at about 04:00 p.m., complainant got an information with regard to death of his sister and on this information, the complainant and his wife went to the matrimonial house of his sister and saw beheaded dead body of his sister lying therein and on her face, incised wounds were present.

(5) The investigation of the aforesaid case was conducted and a charge-sheet dated 22.02.2021 under Sections 302, 498-A, 120-B I.P.C. and Section 3/4 of Dowry Prohibition Act, 1961 was filed. Thereafter, the case was committed to the Court of Sessions in the usual manner, wherein the case was registered as Sessions Trial No. 308 of 2021 before the Court of Sessions Judge.

(6) Apparently, earlier the revisionist had filed an application under Section 310 Cr.P.C. (marked as paper No.114ka) for local inspection of the place of occurrence, which was rejected by the trial Court vide order dated 01.03.2024 and the same attained finality as according to the revisionist, the same was not challenged before higher Court. Subsequently, the revisionist/accused has filed another application under Section 310 Cr.P.C. (marked as 195 kha 1) seeking local inspection of the place of occurrence, which too was rejected by the trial Court vide order dated 10.01.2025. It is this order dated 10.01.2025, which has been challenged in the present revision by the revisionist/accused.

(7) Learned Counsel for the revisionist has submitted that the opposite party No.2 is the complainant, who made the allegation against the revisionist based on false and manipulated facts. He further submits that the investigation was conducted in a botched manner with prejudice to named accused as the chargesheet prepared during the investigation is faulty and does not show the true picture of the incident and it has been prepared by the Investigating Officer without showing the passage near the entrance, which leads into the room in which the body of the deceased was found.

(8) Learned Counsel for the revisionist has further submitted that learned trial Court has passed the impugned order in a mechanical manner and his findings are based only to the effect that earlier application filed by the accused/revisionist under Section 310 Cr.P.C. has been rejected vide order dated 01.03.2024, thus, the impugned order may be set aside/quashed.

(9) Per contra, learned A.G.A. as well as learned Counsel for the opposite party No.2 have pointed out that the present revisionist has earlier approached the Hon'ble Supreme Court with a prayer to grant him bail by filing S.L.P. No.10085/2024 and the Hon'ble Supreme Court was pleased to pass the following order dated 29.07.2024 :-

"1. Having heard learned senior counsel for the petitioner at a considerable length and taking into consideration the peculiar facts and circumstances of this case, we are

not inclined to release the petitioner on bail at this stage. However, the Trial Court is directed to expedite the ongoing proceedings and make an endeavour to conclude the trial within six months, subject to the cooperation to be extended by the prosecution as well as the accused.

2. The special leave petition is, accordingly, dismissed.

All pending applications if any, also stand disposed of."

(10) In this backdrop, learned A.G.A. for the State-opposite party No.1 as well as opposite party No.2 submits that as Hon'ble Supreme Court has directed the trial Court to conclude the trial within six months, therefore, the trial court had made all the endeavour to conclude the trial within the time fixed, however, the revisionist has adopted delaying tactics by moving various applications for delaying the ongoing trial, In such circumstances, the trial court pursuant to the order of Hon'ble Supreme Court proceeded to decide the matter within stipulated time fixed by Hon'ble Supreme Court. According to the learned Counsel, the trial Court, after appreciating the evidence on record, has rightly come to the conclusion that the revisionist has deliberately filed application under Section 310 Cr.P.C. just to linger on the case.

(11) This Court has heard learned Counsel for the parties and has gone through impugned order.

(12) Section 310 Cr.P.C. (Now B.N.S.S., 2023) deals with local inspection, which reads as under:-

"Section 310 Cr.P.C.- Local Inspection:

(1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost."

(13) Perusal of the aforesaid section itself shows that the accused does not has any right in this regard and even otherwise the said provision is not a mandatory provision and it is within the discretionary parameters of the concerned court.

(14) In the present case, the trial Court, while rejecting the application filed by the revisionist under Section 310 Cr.P.C. has clearly observed herein as under :-

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