

# **Manish Mishra vs State Of U.P. And Another on 31 January, 2025**

**Author: Raj Beer Singh**

**Bench: Raj Beer Singh**

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Neutral Citation No. - 2025:AHC:14554

Court No. - 73

Case :- APPLICATION U/S 482 No. - 42720 of 2024

Applicant :- Manish Mishra

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Lokesh Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard, learned counsel for the applicant, Sri Manish Goyal, learned Additional Advocate General along with learned A.G.A. for the State and perused the material brought on record.

2. This application under Section - 482 Cr.P.C. has been preferred against order dated 24.10.2024, passed by learned Additional Civil Judge (S.D.)-I/M.P., M.L.A. Court, Bhadohi-Gyanpur in Case No. 1752 of 2005 (State Vs. Vijay Mishra and Others), whereby the opportunity of applicant-accused for producing evidence has been closed.

3. Learned counsel for the applicant submitted that applicant has been falsely implicated in the aforesaid case. The case was lodged in the year 2002 and after submission of charge-sheet, the co-accused Manoj Kumar Mishra has challenged the proceedings of that case by filing application under Section - 482 No. 15935 of 2006, wherein proceedings of the said case were stayed by this Court. However, later on the said application under Section - 482 Cr.P.C. was dismissed by this Court vide order dated 23.01.2020. It was submitted that the applicant has moved application under section 311 CrPC for examination of the police officials, who on 06.06.2022 have brought the applicant from Central Jail, Naini to the Gyanpur court in police custody. That application was rejected by the trial court vide order dated 22.11.2023. Applicant has filed a revision against that order, which was allowed vide order dated 09.01.2024 and matter was remanded back to the trial court. In compliance of the order of Revisional court, the application of applicant was allowed vide order 15.04.2023. In pursuance to that on 22.04.2024 statement of Munna Lal, the then Circle Officer, was recorded as D.W.-1. It was submitted that on 03.08.2024 the applicant has filed an application for summoning of the Investigating Officer and the Sub-Inspector, who have accompanied applicant Manish Mishra from Central Jail, Naini to Gyanpur court, which was allowed vide order dated 03.08.2024. It was submitted that on some of the dates fixed by the trial court, learned Presiding Officer was on leave and the applicant has not caused any undue delay but the opportunity of examining said persons in defence evidence was closed by the trial court vide impugned order dated 24.10.2024, in an arbitrary manner. The applicant is not responsible for delay in trial and in fact the proceedings have remained stayed from the year 2006 to 23.01.2020 in pursuance to order of this Court. Referring to facts of the matter, it was submitted that impugned order is liable to be set aside and that in the interest of justice, applicant may be granted opportunity for examining the aforesaid witnesses in defence.

4. Sri Manish Goyal, learned Additional Advocate General has opposed the application and submitted that while the case was fixed for final arguments, the applicant has moved application under Section - 311 Cr.P.C. for summoning of the police officials, who have brought the applicant from Central Jail, Naini to Gyanpur court in relation to crime number 111 of 2002, which was rejected, however in pursuance to the order of Revisional court, said application was allowed by the trial court vide order dated 15.04.2023. The applicant was granted sufficient opportunity to produce the said witnesses but only two witnesses were examined and no other witness was produced and thus, the further opportunity of producing said witnesses was rightly closed. Learned Additional Advocate General has referred order-sheet of the trial court and submitted that sufficient opportunity was provided to the applicant to produce the said witnesses but as applicant has failed to produce the said witnesses. Learned AAG has referred case of Rajaram Prasad Yadav Vs. State of Bihar and Another (2013) 14 Supreme Court Cases 461 and submitted that there is no illegality or perversity in the impugned order.

5. I have considered the rival submissions and perused the record.

6. Perusal of record shows that applicant is facing trial in aforesaid case and while the case was fixed for final arguments, the applicant has moved application under section 311 CrPC for summoning of the police officials, who on 06.06.2002 have brought the applicant from Central Jail, Naini to the Gyanpur court in police custody in relation to crime number 111 of 2002. That application was

rejected by the trial court vide order dated 22.11.2023. Applicant has filed a revision against that order, which was allowed vide order dated 09.01.2024 and matter was remanded back to the trial court. In compliance of the order of Revisional court, the application of applicant was allowed vide order 15.04.2023. It appears in pursuance to that order, on 22.04.2024 statement of Munna Lal, the then Circle Officer, was recorded as D.W.-1. The order sheet of trial court shows that statement of one more witness was recorded on 02.08.2024 as D.W. 2. As per version of applicant, on 03.08.2024 the applicant has filed an application for summoning of the Investigating Officer and the Sub-Inspector, who have accompanied applicant Manish Mishra from Central Jail, Naini to Gyanpur court, which was allowed vide order dated 03.08.2024. The copy of the order dated 03.08.2024 brought on record goes to show that the said application was allowed subject to condition that on the next date both the said witnesses shall be produced before the Court and next date was fixed for 14.08.2024. It appears from record that on 14.08.2024 the Presiding officer was on leave and matter was fixed for 27.08.2024 for evidence of said witnesses. On that date applicant did not produce any witness and case was adjourned to 13.09.2024, subject to condition that if witness were not produced on the next date, the opportunity of applicant to produce evidence would be closed. On 13.09.2024 no witness was produced by the applicant and matter was adjourned to 25.09.2024, on which date the Presiding officer was on leave and matter was adjourned 04.10.2024. On 04.10.2024 no witness was produced by the applicant and matter was adjourned to 05.10.2024. On 05.10.2024 again no witness was produced by the applicant and matter was adjourned to 08.10.2024. On 08.10.2024 again no witness was produced by the applicant and matter was adjourned to 17.10.2024, however on that date the Presiding officer was on leave and case was adjourned to 24.10.2024 but on that also no witness was produced and the trial court has closed the opportunity of applicant to produced evidence. The above facts clearly shows that the trial court has been granted sufficient opportunity to the applicant to produce his witnesses in pursuance of order dated 15.04.2023 and 03.08.2024.

7. In view of aforesaid, it can not be said that impugned order is suffering any such patent illegality or any abuse of the process of court so as to require any interference by invoking inherent powers. It may be observed that when an order, against which remedy of revision is available but instead of available that remedy, such order is challenged under section 482 Cr.P.C., interference can only be made in case of abuse of of process of court or in some other extraordinary situation warranting exercise of inherent jurisdiction. In the instant matter no such case is made out. The application under section 482 Cr.P.C. has no substance thus, liable to be dismissed.

8. The application under section - 482 Cr.P.C. is dismissed.

Order Date :- 31.1.2025 S Rawat