

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____/2024
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO.6182/2024

NADEEM

Appellant(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. Service has been effected on respondent nos. 2 and 3.

We have heard learned counsel appearing for the appellant and learned counsel appearing for the first respondent - State.

3. The appellant is facing a trial for the offences punishable under Sections 363, 366 and 376 of the Indian Penal Code, 1860 (for short, 'the IPC') and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POSCO Act')

4. The second respondent - complainant is PW1 whose examination-in-chief was recorded by the Trial Court on 15th February, 2021. It appears that due to pandemic, evidence was recorded through video conference. The order sheet dated 27th July, 2021 records that the appellant

appeared through video conference but his Advocate was not present. The Trial Court closed the cross-examination of PW1 on the very day. Thereafter, PW2 and PW4 (victim) were examined by the Court. On 16th May, 2023, the appellant moved an application under Section 311 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.) for recalling PW1 to enable him to cross-examine the witness. The learned Trial Judge by order dated 30th May, 2023 rejected the application. From the order dated 31st October, 2023, we find that the application was opposed by the learned Public Prosecutor.

5. Being aggrieved by the said order, the appellant filed a petition under Section 482 of the Cr.P.C. for quashing the order of the Trial Court. By the impugned order dated 31st October, 2023, the application has been rejected.

6. This is a case which indicates how the system operates and trials are delayed. Examination-in-chief of PW1 (second respondent) was recorded through medium of video conference on 15th February, 2021. The evidence was recorded in absence of the appellant's Advocate. The learned Trial Judge has noted in the order dated 30th May, 2023 that the appellant was not brought before the Court on 15th February, 2021 and no advocate appeared for him on that day. The learned Trial Judge could not have recorded the

evidence of PW1 in absence of the appellant and his advocate. After noting this illegality in the order dated 13th May, 2023, the Trial Court rejected the application. The learned Trial Judge also noted that during the pandemic period, the presence of prisoners was being procured by the Courts through video conference. This was a case where there was a clear prejudice to the appellant as the evidence of PW-1 was recorded in absence of his advocate. Therefore, the Trial Court ought to have allowed the application. Even the public prosecutor ought to have taken a fair stand and should not have objected to the said application. It is the duty of the public prosecutor to ensure that the trial is conducted in a fair manner.

7. The matter did not rest here. Then, the petition under Section 482 Cr.P.C. filed for challenging the order of the Trial Court was heard by the High Court. As noted in paragraph 4 of the impugned order, the Additional Government Advocate vehemently opposed the petition under Section 482 of the Cr.P.C. Even the High Court has missed the very important point that the evidence of PW1 was recorded in absence of the appellant's advocate. Even the appellant was not physically produced before the Court on that day. The result of all this is that now in December, 2024, PW1 will have to be recalled for cross-examination.

This order we are passing one year and six months after the appellant applied for recall. Both the Courts have adopted hype-technical approach.

8. Accordingly, both the impugned orders are set aside. We direct the learned Trial Court to recall PW1 for cross-examination by the Advocate for the appellant. Necessary summons be issued by the learned Trial Court to the second respondent to appear for undergoing cross-examination on the date fixed by the Trial Court.

9. The appeal is accordingly allowed on above terms.

10. Pending application(s), if any, shall stand disposed of.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
NOVEMBER 28, 2024.

ITEM NO.13

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.6182/2024

[Arising out of impugned final judgment and order dated 30-10-2023 in A482 No. 34261/2023 passed by the High Court of Judicature at Allahabad]

NADEEM

Petitioner(s)

VERSUS

STATE OF U.P. & ORS.

Respondent(s)

(IA No. 95300/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 95298/2024 - EXEMPTION FROM FILING O.T.)

Date : 28-11-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Abdul Qadir Abbasi, AOR
Mr. Maaz Rehman Khan, Adv.
Mr. Aaraf Khan, Adv.

For Respondent(s) Ms. Ruchira Goel, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
AR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[Signed order is placed on the file]