

Neutral Citation No. - 2025:AHC-LKO:38406

**In the Hon'ble High Court of Judicature at Allahabad,
Lucknow Bench, Lucknow**

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 2141 of 2025

Applicant :- Sachin Kumar Verma @ Sachin Kumar Soni @ Pawan Soni

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Lko. And Another

Counsel for Applicant :- Anil Kumar Yadav, Devansh Singh Chauhan, Manoj Kumar

Counsel for Opposite Party :- G.A., Vikas Vikram Singh

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Devansh Singh Chauhan, learned counsel for the applicant, Sri Anurag Verma, learned AGA-I for the State, Sri Vikas Vikram Singh, learned counsel for opposite party no. 2 and perused the records.
2. By means of the instant application filed under Section 482 Cr.P.C./Section 528 BNSS, the applicant has challenged validity of an order dated 13.02.2025 passed by the Session Judge, Raebareli in Session Trial No. 11 of 2020 rejecting an application under Section 233 Cr.P.C. filed by the applicant for summoning some police persons for being examined as his defence witnesses as also summoning some documents in evidence.
3. The aforesaid case was instituted on the basis of an FIR lodged on 10.10.2019 against the proprietor and staff members of Somu Dhaba at Raebareli stating that the dead body of the informant's son was found by the police near a godown near Garhi Khas. Upon making an inquiry, the informant came to know that his son had gone to Somu Dhaba along with some other persons for having dinner. The proprietor and staff members of Somu Dhaba had assaulted the informant's son with sticks and iron bars. The informant expressed an

apprehension that his son had been killed and the dead body had been thrown near a godown to give it a semblance of an accident. The post-mortem examination report mentions as many as ten injuries on the dead body.

4. After investigation, the Investigating Officer submitted a charge-sheet dated 25.12.2019. The trial court took cognizance of the offences and summoned the accused persons to face trial by means of an order dated 10.01.2020. The trial court framed charges by means of an order dated 16.09.2022. On 12.02.2025, the applicant filed an application before the trial court under Section 233 Cr.P.C. requesting for production of a preliminary inquiry report dated 18.11.2019 and a show cause notice dated 19.11.2019 issued by the Superintendent of Police, as defence evidence stating that those are relevant as per the provisions contained in Section 9 of the Evidence Act. The applicant sought production of the relevant extract of the general diary of Police Station Mill Area, Raebareli which contains entries to the effect that a police constable was instructed to go and get the Eatery Somu Dhaba closed. The applicant sought production of the then Circle Officer, Dalmau, Raebareli as a witness, as he had submitted the preliminary inquiry report dated 18.11.2019 finding certain police persons guilty of negligence in performing their official duties concerning the incident in question. The applicant also sought production of the Inspector in-charge of the Police Station, who had instructed some police officials to go and get the Eatery closed. Further, he sought production of a police constable and a head constable who had gone to the eatery and who had come back after getting the eatery closed.
5. The aforesaid application under Section 233 Cr.P.C. has been rejected by means of the impugned order dated 13.02.2025 on the ground that the preliminary inquiry report is not essential for a just decision of the matter and its production has been sought to cause delay in disposal of the trial. Regarding production of the police persons named in the application, the trial Court stated that they have not been made prosecution witnesses and those persons had not witnessed the

incident, therefore, production of these persons as witnesses is not necessary for a just decision of the case. The trial court came to a conclusion that the application under Section 233 Cr.P.C. has been filed with the objective of causing delay in disposal of the trial and to defeat the ends of justice.

6. A copy of the preliminary inquiry report dated 18.11.2019 submitted by the Circle Officer, Dalmau to the Superintendent of Police, Raebareli has been annexed with the application and this preliminary inquiry report mentions that Constable Virendra Bhargava (under suspension), Head Constable Suresh Chandra (under suspension), Head constable Jagdish Prasad (under suspension), Constable Amit Rajak (under suspension) are guilty in the matter and Sri Raj Kumar Pandey, Inspector in-charge Mill Area, Sri. Raj Kumar Singh, the Inspector in-charge Harchandpur and Sub-Inspector Pramod Kumar, the Chowki in-charge Tripula had acted negligently in the matter. The concerned Circle Officer was found guilty of laxity in supervising the performance of duties by his subordinates.
7. The aforesaid preliminary inquiry report dated 18.11.2019 refers to the statements of Inspector of Police Sri Raj Kumar Pandey, Head Constable Suresh Chandra and Constable Virendra Bhargava. The aforesaid police officials had stated that a telephonic information was received at 00:09 Hrs. on 10.10.2019 that some boys were fighting at Somu Dhaba. Two police persons reached Somu Dhaba on a motorcycle. Constable Virendra Bhargava informed at 00:26 Hrs. that the boys who were fighting at the Dhaba had already gone away. Thereafter the police persons remained there till 02:00 a.m. and they left only after getting the Dhaba closed.
8. The learned Counsel for the applicant has submitted that the aforesaid statements of some police persons that they remained present at the Dhaba till 02:00 a.m., the Dhaba was open and they left at 02:00 a.m. after getting the Dhaba closed, would be relevant to prove that the staff members of the Dhaba were present at the Dhaba till 02:00 a.m.

It is alleged that the deceased was killed at a place about 6 kilometers away from the Dhaba. The facts that the Dhaba remained open till 02:00 a.m. and the staff members were present at the Dhaba would prove the applicant's presence at the Dhaba and obviously, the applicant cannot be present at the same time at another place about 6 kilometers away from the Dhaba, where the incident allegedly took place.

9. The opposite party no. 2 has filed a counter affidavit annexing therewith a copy of an order dated 20.02.2025 passed by the Session Judge, Raibareli closing the defence evidence. This order has been passed keeping in view an endorsement made by the learned counsel for the applicant that defence evidence on behalf of the applicant Sachin Soni and co-accused Vinay Kumar is closed. The endorsement has been signed by the accused persons Vinod Kumar, Sachin Soni (the applicant) and another co-accused Jai Chand had put his thumb impression under it.
10. The State has also filed a counter affidavit annexing therewith a copy of an order dated 21.02.2025 wherein the Sessions Judge had recorded that an endorsement of closure of defence evidence has been made by the accused persons Abhitej Singh, R. K. Yadav alias Ram Krishna Yadav, Suresh Yadav, Harshit Verma, R. P. Yadav alias Ram Pratap Yadav, Sumer alias Ram Sumer, Jai Chand alias Jurha, Vinod and Sachin (the applicant). The accused persons Saurabh Sharma, Gaya Bux alias Deepu and Manu Bari have stated in their statements under Section 313 Cr.P.C. that they will not produce any defence evidence.
11. The counsel for the co-accused persons Luvkush, Atul Tiwari, Ramesh Yadav and Arpit stated that co-accused Luvkush has filed Criminal Revision No. 157/2025, which is pending in this Court. Till decision of the criminal revision, the said co-accused persons did not close their evidence as there was a possibility of the said co-accused persons getting relief from this Court. The trial court accordingly,

gave opportunity to co-accused persons Arpit Yadav, Ramesh Yadav, Atul Tiwari and Luvkush to produce evidences.

12. The learned counsel for opposite party no. 2 as well as the learned AGA-I have submitted that the applicant has concealed this order dated 20.02.2025 while filing the instant petition under Section 482 Cr.P.C., which was presented on 05.03.2025.
13. Learned AGA has also pointed out that in the order dated 01.03.2024 passed by this Court in Bail Application No. 2431 of 2024 filed by the co-accused persons Suresh Yadav, this Court had issued a direction to the Sessions Judge for holding day-to-day trial of the case, without granting any adjournment to any of the parties. Co-accused Suresh Yadav had challenged the order dated 01.03.2024 by filing SLP (Criminal) No. 6746 of 2024 which was dismissed by means of an order dated 16.05.2024 and the Hon'ble Supreme Court had also requested the trial court to proceed with the trial expeditiously.
14. The applicant has filed the instant application and sought stay of proceedings of trial and has succeeded in getting an interim order dated 23.04.2025 passed by this Court staying the proceedings of the trial, without disclosing the aforesaid orders passed by this Court as well as by the Hon'ble Supreme Court. Seeking stay of proceedings without disclosing that the proceedings had been expedited by this Court and by the Supreme Court, also amounts to concealment of material fact.
15. The learned Counsel for the opposite parties have submitted that the inherent power of this Court recognized by Section 482 Cr.P.C. is a discretionary power and while approaching to seek invocation of the discretionary inherent power, a litigant must approach this Court with clean hands and must disclose all the relevant facts. Any concealment of any material fact would disentitle an applicant from seeking any discretionary relief from this Court.

16. The learned AGA-I has placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Kusha Duruka v. State of Odisha**: (2024) 4 SCC 432, wherein the Hon'ble Supreme Court referred to the precedents in the cases of **Chandra Shashi v. Anil Kumar Verma**: (1995) 1 SCC 421; **K. D. Sharma v. SAIL**: (2008) 12 SCC 481, **Dalip Singh v. State of U.P.**: (2010) 2 SCC 114 and **Moti Lal Songara vs Prem Prakash @ Pappu & Anr** : (2013) 9 SCC 199, and has concluded as follows: -

“6. It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is “satya” (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre-Independence era, however, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, the values have gone down and now litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenges posed by this new breed of litigants. Now it is well settled that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim suppressio veri, expressio falsi i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted. It is nothing but degradation of moral values in the society, may be because of our education system. Now we are more happy to hear anything except truth; read anything except truth; speak anything except truth and believe anything except truth. Someone rightly said that: “Lies are very sweet, while truth is bitter, that’s why most people prefer telling lies.”

17. Replying to the aforesaid objection, the learned counsel for the applicant has submitted that as the applicant has assailed validity of the impugned order dated 13.02.2025 only, the order dated 20.02.2025 is not relevant for the present case and the applicant cannot be said to be guilty of concealment of any material fact. He has submitted that the applicant has filed a supplementary affidavit on 01.04.2025

annexing therewith the entire order sheet, including the order dated 20.02.2025 and, therefore, he has not concealed any fact.

18. The submission of the learned counsel for the applicant is that the order dated 20.02.2025 was not relevant for the present case, is not acceptable and the same is turned down for the reason that when the applicant is challenging the validity of the order dated 13.03.2025 rejecting the prayer for production of further defence evidence, the fact that he and his Counsel have made an endorsement on 20.02.2025 that they do not want to produce any defence evidence at this stage, is certainly relevant for the case.
19. The subsequent order dated 21.02.2025 passed by the Sessions Judge, Raebareli was in fact also relevant for the present case wherein the Sessions Judge had recorded that the counsel for the co-accused persons Luvkush, Atul Tiwari, Ramesh Yadav and Arpit stated that co-accused Luvkush has filed Criminal Revision No. 157/2025, which is pending in this Court. Till decision of the criminal revision, the said co-accused persons could not close their evidence as there was a possibility of the said co-accused persons getting relief from this Court. The trial court accordingly, gave opportunity to co-accused persons Arpit Yadav, Ramesh Yadav, Atul Tiwari and Luvkush to produce evidences.
20. Like co-accused Luvkush, the applicant could also have sought time to adduce evidence or while making an endorsement that they did not want to adduce any defence evidence at this stage, they could have informed the trial Court that they were challenging the order dated 13.02.2025 before this Court and they hoped to get permission for production of further evidence from this Court, but they chose not to do so.
21. Although the learned counsel for the applicant had tried to refute the submission of the applicant by stating that the applicant had filed a supplementary affidavit on 01.04.2025 annexing therewith the entire order sheet, this supplementary affidavit runs into 1671 pages and

there is no mention in the supplementary affidavit about the order dated 20.02.2025. A copy of the order forms a part of 1671 pages and it finds place at page 1539 of the supplementary affidavit.

22. In para 11 of the supplementary affidavit it has been stated that “*after recording statement of the accused persons under Section 313 Cr.P.C., the aforesaid case was fixed for defence evidence and the trial court has illegally and arbitrarily closed the stage of defence evidence and the case has been fixed for final argument and since then the final arguments are going on till date*”. Even in this paragraph, although the applicant has alleged that the learned trial court has closed the defence evidence illegally and arbitrarily there is no mention that the applicant and his counsel both had made an endorsement on the order sheet stating that defence evidence on behalf of the applicant is closed at this stage.
23. This supplementary affidavit is a classical example of crafty drafting by an advocate, which has never been appreciated by the courts. All the relevant facts have to be pleaded clearly and categorically. The conduct of the applicant in not making averments regarding the aforesaid endorsement made by the applicant and his counsel on 20.02.2025 and about the orders dated 20.02.2025 and 21.02.2025 in the petition and thereafter filing a supplementary affidavit running into 1671 pages and not making any averment regarding this in the body of the supplementary affidavit, annexing the order dated 20.02.2025 at page 1539 of the supplementary affidavit and not pointing out the same during submissions, till an objection regarding concealment was made by the learned Counsel for the opposite parties, is nothing but concealment of a relevant fact which concealment has been given a semblance of disclosure by a crafty drafting. This conduct of the applicant or his counsel cannot be appreciated by the Court, to say the least. The applicant and his counsel both are advised to be careful in future and to ensure non recurrence of such incidents which may invite severe action from the Court.

24. However, this Court is also of the view that the quality of drafting of petition or any concealment made therein, would not prevail over the cause of justice where the question of personal liberty of a person is involved and the facts of the case warrant giving opportunity of further defence to an accused person for a just decision of the case.
25. As the applicant is an accused in a case alleging commission of murder and the statements referred to in the preliminary inquiry report appear to be relevant regarding presence of the applicant at a place other than the place of the incident, statements of the said police persons would be relevant and it would enable the court to arrive at a just decision of the case.
26. The trial court has rejected the application under Section 233 Cr.P.C. for the sole reason that the said police officials have not witnessed the incident and the application for summoning those persons under Section 233 Cr.P.C. has been filed merely in order to cause delay in disposal of the trial.
27. Although expeditious decision of a criminal trial is essential and the courts must make every endeavor to ensure expeditious disposal of the trial, while striking a balance between expedition and justice, the cause of justice has to be given precedence even if it causes some delay in disposal of the matter.
28. When an accused person whose personal liberty is at stake, seeks production of some police persons as defence witnesses, who had witnessed that the Dhaba remained open till 02:00 a.m. and the staff members were present at the Dhaba, this would be relevant for a just decision of the case as it would prove the applicant's presence at the Dhaba and obviously, the applicant cannot be present at the same time at another place about 6 kilometers away from the Dhaba, where the incident allegedly took place. However, the show cause notice and the preliminary enquiry report forming a part of the disciplinary action taken against the police persons, which preliminary enquiry report does not establish anything conclusively, would not establish anything

in the criminal trial also and, therefore, the production thereof will not be relevant for the trial. The presence of the police persons at the Dhaba can be proved by their oral testimony and the production of general diary of the police station will also not be relevant for this purpose.

29. In view of the aforesaid discussion, I am of the view that the impugned order dated 13.02.2025 deserves to be set aside and the application under Section 233 Cr.P.C. deserves to be allowed in part.
30. Accordingly, the application is *partly allowed*.
31. The preliminary inquiry report dated 18.11.2019 and the show cause notice dated 19.11.2019 do not prove anything conclusively and the request for summoning the preliminary report is turned down. The request for summoning the entry made in General Diary of the police station is also turn down. The request for summoning the Inspector in-charge, Police Station Mill Area, Raebareli Sri Raj Kumar Pandey, Constable Virendra Bhargava and Head Constable Suresh Chandra is allowed.
32. The Superintendent of Police, Raebareli shall ensure production of these witnesses without any delay.
33. The counsel for the applicant shall ensure examination of the aforesaid witnesses on the date of their production and no adjournment whatsoever shall be granted for this purpose.

(Subhash Vidyarthi J)

Order Date: - 07.07.2025

Pradeep/-