

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
(@ SLP(CRL.) No.10756/2023)

SUNDER LAL

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. The question which arises for consideration in this appeal is as to whether a witness which has been shown in the prosecution list but not examined on behalf of the prosecution, can be permitted to be examined as a defence witness.
3. In our considered view, both the Courts are wrong in declining the request of the appellant, as factually, the witness sought to be examined on the side of the defence has not been examined by the prosecution. In other words, the prosecution has consequentially chosen to discharge the said witness and, therefore, he has not been put in the witness box to depose on behalf of the prosecution.
4. In such view of the matter, there is no bar in the law for examining the said witness as defence witness. After all, it is for the Trial Court to consider the evidentiary value of

the said witness while coming to its conclusion.

5. Accordingly, the impugned order passed by the High Court confirming the order passed by the Trial Court stands set aside.
6. Consequently, the appeal stands allowed. The appellant is permitted to examine the prosecution witness as defence witness. Needless to state that it is well open to the prosecution to cross-examine the said witness.
7. Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[S.V.N. BHATTI]

NEW DELHI;
2nd FEBRUARY, 2024

ITEM NO.30

COURT NO.14

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(s) for Special Leave to Appeal (Crl.) No(s). 10756/2023

(Arising out of impugned final judgment and order dated 04-08-2023 in A482 No. 28392/2023 passed by the High Court of Judicature at Allahabad)

SUNDER LAL

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(IA No. 173369/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 173370/2023 - EXEMPTION FROM FILING O.T.)

Date : 02-02-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Divyesh Pratap Singh, AOR
Ms. Shivangi Singh, Adv.
Mr. Amit Sangwan, Adv.
Mr. Varun Singh, Adv.
Mr. Anupam Chaudhary, Adv.
Ms. Ranjana Singh, Adv.
Ms. Sneha Chandna, Adv.

For Respondent(s) Mr. Garvesh Kabra, AOR
Mr. Vikas Bansal, Adv.
Mrs. Pooja Kabra, Adv.
Mr. Mrs. Sujata Kabra, Adv.

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

Leave granted.

The appeal stands allowed in terms of the signed order.

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

(SWETA BALODI)
COURT MASTER (SH)

(POONAM VAID)
COURT MASTER (NSH)

(Signed order is placed on the file)