

Court No. - 81

Case :- CRIMINAL REVISION No. - 764 of 1990

Revisionist :- Mohd. Yunus Khan And Others

Opposite Party :- State And Sahid Ali Khan

Counsel for Revisionist :- Satish Trivedi

Counsel for Opposite Party :- A.G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. None responds for the revisionists.
2. Heard Sri L.D.Rajbhar, learned A.G.A. and perused the record.
3. This criminal revision has been filed against the judgement and order dated 30.04.1990 passed by Munsif Magistrate (LCC.III) Bareilly in Criminal Case no.1625 of 1989 whereby the revisionists have been summoned to face trial for an offence under Section 420 I.P.C.

4. Relevant facts are as below:

Complainant Sajid Ali filed a complaint under Section 420 I.P.C. against Mohd. Yunus Khan and Muste Hasan Khan (the revisionists herein) with certain allegations in nutshell that he was duped of his money on false assurance of arranging for passport for securing job for him in a foreign country. This complaint was filed on 24.03.1987. The accused persons were summoned under Section 420 I.P.C. by order dated 01.12.1987 passed by Munsif Magistrate, II Bareilly. The accused persons preferred a criminal revision no.79 of 1988. The Additional Sessions Judge took up all the contentions of both the sides and passed an order on 17.11.1989. By aforesaid order, the revision was allowed and the impugned order was quashed, with further direction to the learned Magistrate for passing an order afresh, in the light of the directions and observations of the revisional court. The trial court thereafter passed a fresh order on 30.04.1990 summoning the accused persons to face trial for the offence under Section 420 I.P.C.

5. Now the accused persons are before this court challenging the summoning order dated 30.04.1990 by filing this criminal revision. As none responds for the revisionist, hence with a view to finally decide this old case of 1990, I went through the memo of the revision.

6. The contention of the revisionist as disclosed from the revision memo, in essence, is that the magistrate court, while passing fresh order of summoning did not follow the directions of the revisional court. The police report has been ignored in clear violation of order of revisional court. The trial court further ignored all clear cut directions of revisional court and passed the order in most casual and cursory manner.

7. I went through the material on record. The revisional court had observed in para-13 as below:-

"On the representation of the three i.e. the applicants and PW 1 Munnawwar Ali and the applicants assured him for employment, Mukhtiar Khan, Sajid Ali, Zahid Ali and others on 29.03.83 handed over the money and their passport. Two things emerge out from this F.I.R. Firstly, P.W.1 Munnawwar Ali was an accomplice and secondly this F.I.R. is just contradictory to the evidence led before the trial court. All these circumstances have not been considered by the learned Magistrate. The receipts are said to have been executed by the two accused persons acknowledging the advancement of money and their liability to pay the same. Those receipts are executed much before the dispute arose. Does these receipts show the criminal intention of the applicant or has also not been considered by the learned Magistrate. The civil suit could have been brought on the basis of these receipts. This aspect too was not considered by the learned Magistrate. It only goes to show that the learned Magistrate passed the impugned order without applying his mind to the material on record. Therefore, he committed illegality in passing the impugned order.

For the reasons recorded above I am of the opinion that the learned Magistrate has committed illegality in passing the impugned order. Therefore, the revision is liable to be allowed and the case must be sent back to the learned Magistrate for disposal according to law.

8. The learned revisional court has observed in para no.12 as below:-

"12. A perusal of the impugned order shows that the Learned Magistrate considered the statement of the complainant and P.W.1 Munnawwar Ali as well as the copy of the F.I.R. and the receipt executed by the applicant. A perusal of the complaint shows that there is no averment to the effect that the accused had a dishonest intention from the outset. The question whether the evidence discloses civil or criminal liability depends upon the questions whether the complainant imparting with his money acted on the representation of the accused and in belief of the truth thereof and whether these representations when made were in fact false to the knowledge of the accused and whether he had a dishonest intention from the outset. If any of the ingredients is missing there will not be any criminal liability."

9. For proper appreciation of issue involved, I find it appropriate to reproduce the relevant paras of the fresh order under challenge passed by the trial court in the light of order of revisional court which as below:-

"थाना कैण्ट से प्राप्त रिपोर्ट के अनुसार थाने पर दर्ज करायी गयी रिपोर्ट अपराध संख्या 76/86 की विवेचना के उपरांत अंतिम आख्या संख्या -21 द्वारा समाप्त किया गया। यह रिपोर्ट सबूत के अभाव में समाप्त करने के तथ्य के तथ्य को भी अंकित करता है। इसके उपरांत वादी द्वारा दिनांक 24.3.87 को उक्त परिवाद प्रस्तुत किया गया। ऐसा कोई प्राविधान नहीं है जिसके आधार पर अंतिम आख्या समाप्त हो जाने के बाद अभियुक्त के विरुद्ध परिवाद न चल सकता हो। वादी द्वारा दायर किये गये परिवाद को तथा उसके बयान

अंकित धारा 200 व 202 द०प्र०सं० का साक्ष्य में अंकित किया गया।

परिवादी की ओर से वरिष्ठ पुलिस अधीक्षक को दिये गये प्रार्थना पत्र की नकल मय रजिस्ट्री रसीद तथा अभियुक्त गण द्वारा लिखित रसीद की नकल की फोटो कापी दस्तावेजी साक्ष्य के रूप में प्रस्तुत की है।

पत्रावली पर उपलब्ध साक्ष्य के आधार पर अभियुक्त गण मो० यूनिस व मुश्त हसिन खां के विरुद्ध प्रथम दृष्टया धारा 420 भा०द०वि० का आरोप बनता है।

अतः अभियुक्त गण मो० यूनिस, मुश्तेहसिन खां को धारा 420 भा०द०वि० के अन्तर्गत सम्मन द्वारा तलब किया जावे।"

10. From the impugned order, it is obvious that no discussion as regard presence or absence of essential ingredients, which would constitute offence under Section 420 IP.C. has been made by learned trial court. Summoning order under challenge is sketchy and bereft of any reasoning. In my opinion, the material observations made by the revisional court in its order, have been completely ignored by the court below. It was expected of the court below that it shall peruse the material on record in the light of things so clearly pointed out by the revisional court. The approach of the trial court was very casual and cursory, therefore, the impugned order is liable to be set aside.

11. In view of the above, I find that the impugned order is not sustainable as it has been passed in utter disregard of directions of lower revisional court.

12. The criminal revision is **allowed and the impugned order dated 30.04.1990 is set aside.**

13. A copy of this order be certified to the court concerned for necessary action.

Order Date :- 30.10.2023

Asha