

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 7751 of 2009

Petitioner :- Prem Shankar Tiwari And Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Dr. C.P. Upadhyay, Man Mohan Mishra

Counsel for Respondent :- Govt. Advocate, D.N. Yadav

Hon'ble Subhash Chandra Sharma, J.

1. List revised.
2. No one is present for respondent no.2.
3. Heard Shri Man Mohan Mishra, learned counsel for the petitioners and learned A.G.A. for the State-respondents and perused the record.
4. The instant writ petition has been filed to stay the effect and operation of the impugned order dated 30.10.2007 passed by the learned A.C.J.M., Bhadohi, Gyanpur as well as order dated 18.04.2009 passed by the learned Additional Sessions Judge, Court no.2, Sant Ravidas Nagar, Bhadohi in Case No. 1358 of 2006 (State Vs. Prem Shanker and others) pending before by the Court of learned A.C.J.M., Bhadohi, Gyanpur.
5. It is submitted that in this case false allegations leveling against the petitioners for causing injury with fire arm. First Information Report has been lodged and during the course of medical examination no any fire arm injury was found on the body of the injured, namely, Umrai. After conclusion of investigation, charge sheet was filed against the petitioner before the learned Court in which an application for discharge was moved by the petitioners but without considering the material on record it was dismissed by

the Court of learned A.C.J.M. by order dated 30.10.2007. Being aggrieved with the aforesaid order a criminal revision was filed before the court of learned Sessions, which was registered as Criminal Revision No. 117 of 2007 and was also dismissed vide order dated 18.04.2009 on the ground that the case under Section 307 I.P.C. was triable by the learned Court of Sessions and learned Magistrate had no power to discharge the accused in such cases. Against order passed by the learned Revisional Court, the present petition was preferred before this Court.

6. It is also submitted that during investigation no any such material was found against the petitioners and no *prima facie* case under Section 307 I.P.C. was made out on the basis thereof. Learned Court of A.C.J.M. acted mechanically and without applying its judicial mind passed the order in question. Likewise, learned Additional Sessions Judge also dismissed the revision without going through the merits of the case. It is, therefore, requested to set aside the orders passed by the learned Courts below.

7. Learned A.G.A. for the State has opposed the aforesaid prayer and contended that the charge sheet was filed under Section 307 I.P.C. by the I.O. before the learned Court. The offence under Section 307 I.P.C. is exclusively triable by learned Court of Sessions regarding which under Section 227 Cr.P.C., procedure for discharge has been given but this power is to be exercised with learned Court of Sessions after committal of the case by the learned Magistrate. In this way the application filed by the petitioner was premature and order passed by learned Magistrate as well as the learned Revisional Court cannot be said to be illegal and inappropriate but this petition being devoid of merit is liable to be dismissed.

8. Considering the facts and circumstances of the case, submissions made by learned counsel for the petitioners, learned A.G.A., perusal of the record, and the orders passed by the learned A.C.J.M. as well as learned Sessions Judge in Criminal Revision, it appears that the case was registered under Sections 147, 148, 149 & 307 I.P.C. in which charge sheet was filed by the I.O. after conclusion of investigation. Discharge application was filed before the learned Court of A.C.J.M. who dismissed the discharge application against which the criminal revision was preferred before the Court of learned Sessions which was also dismissed while recording the finding that discharge application was entertainable by the learned Court of Sessions in the case. Section 227 of Criminal Procedure Code provides the procedure for discharge of an accused in cases triable by Court of Sessions.

9. In view of the provisions as contained under Section 227 Cr.P.C., discharge application was to be moved before the learned Court of Sessions at the commencement of trial but it was not maintainable before the learned Court of A.C.J.M. before committal of case.

10. In this way, the application moved by the petitioners being immature was dismissed by the learned A.C.J.M. as well as the learned A.S.J. in Criminal Revision. These orders cannot be said to be illegal and inappropriate but this petition being devoid of merit is liable to be dismissed with liberty to the petitioners to file discharge application afresh at an appropriate stage.

11. Accordingly, this writ petition is **disposed of** finally.

Order Date :- 16.11.2023

Anurag/-