

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 5554 of 2013

Petitioner :- Siya Saran

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Salman Ahmad

Counsel for Respondent :- Govt. Advocate

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the record.

In spite of notice to the respondent No. 2 none appeared.

The present writ petition (under Article 226 of the Constitution of India) has been moved with a prayer to quash and in the nature of mandamus staying the effect and operation of the impugned order dated 16.02.2013 passed by learned Sessions Judge, Jalaun at Orai in criminal revision No. 192 of 2012 (Smt Anita Vs. State of U.P.) arising out of complaint case No. 307 of 2012 (Smt Anita Vs. Siya Saran and Others) under Sections 354, 504, 506 I.P.C., Police Station Kotwali Orai, District Jalaun.

Facts in brief are that an F.I.R. was lodged as Case Crime No. 192 of 2010 under Sections 354, 504, 506 I.P.C. at Kotwali Orai, District Jalaun in which after investigation final report was filed by the police. Protest petition was filed by the respondent No. 2 which was treated as complaint. After recording statement of the complainant under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C. the complaint was dismissed under Section 203 Cr.P.C. Being aggrieved with the order passed by learned Magistrate dated 17.09.2012 criminal revision was filed before the learned court of Session which was allowed by order dated 16.02.2013 by which matter was remanded back to the learned court of Magistrate for hearing the parties and to pass the order afresh.

It is submitted by learned counsel for the petitioner that in this case the petitioner was not made a party in the revision before the learned court of Session and without affording an opportunity of hearing to him the order in question was passed by the learned Session's court which cannot be said to be lawful in view of provisions as contained under Sections 397, 399 and 401 Cr.P.C. opportunity of hearing to the opposite parties is must but it was negated at the time of hearing as he was not made a party and even the learned revisional court did also not consider this point and without impleading him as party revision was decided. He relied his argument on the case decided by the ***Hon'ble Supreme Court in Raghu Raj Singh***

Rousha Versus Shivam Sundaram Promoters Private Limited AD(CR)-2009-2-415.

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case the order passed by the learned Session Judge cannot be said to be unlawful because no order was passed against the interest of the petitioner and no any prejudice was caused to him.

Considering the submissions made by learned counsel for the petitioner as well as learned A.G.A. for the State and from the perusal of record, orders passed by learned Magistrate as well as learned Session Judge, it appears that, F.I.R. was lodged against the petitioner in which final report was submitted by the police against which protest was moved by the respondent No. 2 which was treated as complaint and after recording the statements of complainant and other witnesses it was dismissed under Section 203 Cr.P.C. Against this order criminal revision was filed before the learned Session's court but the petitioner was not impleaded as opposite party. No Notice was given to him and opportunity of hearing was also not afforded while passing the order by the learned Session's court.

As per the provisions as contained under Section 397, 399 and 401 Cr.P.C. and the law laid down in the aforesaid case, this Court is of the view that learned court of Session must have given an opportunity of hearing to the petitioner also before passing an order in the revision which was not done by him. It vitiates the order passed by learned Session Judge, therefore, this petition has force and is liable to be allowed.

As a result, this petition is ***allowed*** and order passed by learned Session's Judge dated 16.02.2013 is hereby set aside and the matter is remanded back to the learned Session's Judge to pass the order afresh after giving an opportunity of hearing to the petitioner and the revisionist.

Order Date :- 7.11.2023

Suraj Srivastav