

Court No. - 50

Case :- CRIMINAL REVISION No. - 2681 of 2023

Revisionist :- Sumer Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Hare Ram Pandey, Varun Shankar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

Heard learned counsel for the revisionist, learned AGA for the State and perused the material placed on record.

Notice has been issued to opposite party No.2 but the same has been returned back to police station concerned with endorsement that the opposite party No.2 was not found on given address. Certificate of Gram Pradhan has been filed in support of the version wherein it is also submitted that opposite party No.2 is not in fit state of mind.

Instant criminal revision has been preferred against the impugned judgement and order dated 22.8.2022, passed by Additional Sessions Judge, Court No.1, Deoria in Sessions Trial No.08 of 2018, (State vs. Sumer Singh), under Section 307 IPC and 27/30 of Arms Act, Police Station Lar, District Deoria, whereby the charge has been framed against the revisionist for offence under Section 307 IPC and Section 27/30 of Arms Act.

The factual matrix of the case in brief are that the informant/respondent No.2 lodged an FIR at police station concerned on 11.4.2015 at 13:20 hours on the basis of written report wherein he stated that on the same day at around 11:00 AM, some altercation took place between him and the named accused Sumer Singh on account of placing bricks on the land of the informant by the accused, when he told him to remove the bricks from his land, the accused got infuriated and opened a fire on informant with intention to kill him. The shot hit him on his left thigh. The medico legal examination of the injured was conducted at CHC, Lar, Deoria, wherein one lacerated wound over mid thigh, medial aspect of size 1cm X 1cm was found and surface was red. On examination, smell of alcohol was present from his mouth. Patient was disoriented under the influence of alcohol. He was excessive talkative. Finger nose test is uncoordinated. Patient was referred to District Hospital, Deoria for left thigh X-ray. In X-ray report, single cylindrical shape, anterior end conical, radio opaque shadow in left aspect of thigh was found. During course of investigation, accused was arrested by police on the same day at around 17:00 hours from Sehan of his house and a licensed pistol of 7.65mm alongwith 14 live cartridges were recovered from his possession. ON the basis of this recovery,

charge under Section 27/30 of Arms Act was added. The Investigating Officer recorded statement of informant and eye-witnesses namely Rajesh Sharma and Avneet Singh alongwith formal witnesses and submitted chargesheet against the revisionist under section 307 IPC and 27/30 of Arms Act with prayer to prosecute him over said charges. At the stage of commencement of trial, the accused revisionist moved an application 9-Kha seeking discharge from said charges on the ground that the said charges are not made out against the revisionist on the basis of material collected during investigation. In fact the licensed pistol of the revisionist was never used in the offence. The FSL report does not support the fact that the said pistol was used in the offence. The accused had acquired said pistol for his self defence. He has been falsely implicated in the case. No altercation took place. The accused had not caused any injury to the informant. The informant was himself in drunken state at the time of incident and he visited the place of accused. he was abusing and threatening him and was trying to snatch the pistol of the accused. The informant is not having any house or land. The police submitted chargesheet in the case in mechanical manner without properly investigating the case. Whatever done by the applicant was done in self-defence.

Learned court below has rejected the discharge application moved by the revisionist vide order dated 8.11.2019 on the premises that at the stage of framing of charge, what is expected to enquire at the end of the court is that whether on the basis of material collected during investigation the said charges are made out against the accused or not, with a view to put him on trial. Fouling matter was found in FSL report of the recovered pistol from the accused. The informant and other witnesses have supported the FIR version in the statement recorded under Section 161 Cr.P.C. and there is, prima facie, case to frame charges against the accused for said charges. After rejection of discharge application, learned court below has framed charges against the revisionist for offence under Section 307 IPC and 27/30 of Arms Act.

Feeling aggrieved by the charge framing order, present revision has been filed by the revisionist.

Learned counsel for the revisionist submitted that eye-witness Rajesh Sharma has filed an affidavit before the Court of Magistrate, in which he supported the defense version and has stated that on the date and time of alleged incident, he was preparing a table near bamboo cluster situated near the door of accused. he had not heard any sound of firearm. He had not seen any injury on the person of injured. The informant was in drunken state at that time and he came to the door of the accused and was abusing him as well as his wife in filthy language. When the accused objected to this and tried to explain him, he got enraged and during scuffle, the informant grabbed the pistol, which was placed in waist of the accuse and its string had got broken. He further submitted that as per the prosecution version itself, the incident occurred in sudden manner and no intention can be attributed to the accused and he was armed with that licenced pistol at that time. He has been falsely implicated in the case by the informant in collusion with the police. The

informant was arrested from his house. It is relevant point that how the Investigating Officer recorded the statement of informant, when he was in drunken state and was not in a fit state of mind. Dr. KC Rai has stated that patient was referred to Medical College, Gorakhpur as the bullet was inside left thigh of the injured. In fact, accused had not opened any fire on the injured and the informant had not received any injury on the said date at give time. The Doctor has not noted any blackening and tattooing around the wound of the informant. Even on the basis of FSL Report, Lucknow dated 10.7.2017, no prima facie offence is made out against the revisionist.

Per contra, learned AGA opposed the prayer made in present revision to set aside the charges framed against the revisionist and submitted that there is no illegality, irregularity or perversity in the order of framing of charge for said offences against the revisionist and revision deserves to be dismissed.

The accused- revisionist is named in the FIR, which has been lodged within around two hours of the incident. In medico legal examination report as well as X-ray report, the firearm injury has been found and confirmed in the thigh of the injured/informant. The accused was arrested by the police and licenced pistol and 14 live cartridges were recovered from him, which were kept in a magazine on the date of incident. The Doctor has stated that he referred the injured to District Hospital, Deoria as bullet was stucked in his thigh. In FSL Report dated 10.7.2017, the Scientific Officer has sated that in barrel of said recovered pistol, the residue of nitrate, copper and nickel was found as fouling matter, this implies that said pistol was recently used. The accused has not challenged, in specific manner, the order dated 18.10.2019 passed by the learned court below, whereby the discharge application 9-Kha moved by the accused was dismissed and instead he challenged the charge framing order dated 22.8.2022 whereas the framing of charge was only in pursuance of previous order dated 18.10.2019, passed on application under Section 227 of Cr.P.C.

Hon'ble Apex Court in **Tarun Jit Tejpal vs. The State of Goa and Another, (2019) SCC OnLine 1053**, placed reliance on its previous judgement in the case of **Union Of India vs Prafulla Kumar Samal & Anr, (1979) 3 SCC 4**, wherein some principles were summarized in following manner:-

“(1) That the Judge while considering the question of framing the charges under [Section 227](#) of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving

rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

In the present case, the accused revisionist has failed to establish a good case with regard to his prayer for quashment of charge framed against him pursuant to previous order of the trial court, whereby the discharge application moved by the revisionist was rejected by the court. In the considered opinion of this Court, a prima facie case is made out against the revisionist for framing of charge for those offences against which charge is framed and the revision is devoid of merits.

Accordingly, present criminal revision stands **dismissed**.

Order Date :- 16.10.2023

Kamarjahan