

Court No. - 79

Case :- CRIMINAL REVISION No. - 2540 of 2023

Revisionist :- Parvez Usmani And Another

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

Counsel for Revisionist :- Manish Kumar Pandey

Counsel for Opposite Party :- G.A.,Devendra Singh

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Manish Kumar Pandey, learned counsel for the revisionists, learned A.G.A. for the State, Sri Devi Shankar Pandey, learned Advocate holding brief of Sri Devendra Singh, learned counsel appearing on behalf of opposite party no. 2 and perused the record.

This criminal revision has been filed by the revisionists against the order dated 27.03.2023, passed by Sessions Judge, Bijnor, in Sessions Trial No. 438 of 2023 (State vs. Parvez Usmani and others), arising out of Case Crime No. 181 of 2020, under Section 307 I.P.C. and 30 Arms Act, Police Station Dhampur, District Bijnor by which the discharge application filed by the revisionists under Section 227 Cr.P.C. was rejected.

Brief facts of the case are that opposite party no. 2 had lodged a first information report on 08.06.2020 against revisionists and one Salman, which was registered as Case Crime No. 181 of 2020, under Section 307 I.P.C. and Section 30 Arms Act. The statement of informant and injured witnesses were recorded by the Investigating Officer during investigation in which they have supported the prosecution case. The Investigating Officer, after due investigation has submitted charge sheet against the revisionists under Section 307 I.P.C. and charge sheet against co-accused Afzal Ahmad under Section 30 Arms Act. During pendency of trial, the revisionist had moved an application under Section 227 Cr.P.C. on 10.03.2023 for discharge, which was rejected by impugned order dated 27.03.2023.

It is submitted by learned counsel for the revisionists that injuries received by injured persons are simple in nature and and such, offence under Section 307 I.P.C. is not made out against the revisionists and they are liable to be discharged from the offence. The discharge application filed by the revisionists was rejected by learned trial court in a very casual manner, without considering the

evidence collected by Investigating Officer during investigation.

On the other hand, learned counsel appearing on behalf of opposite party no. 2 submits that four persons were received gun shot injuries which was caused by the revisionists with intention to kill and as such, the offence under Section 307 I.P.C. is clearly made out against the revisionists. It is further submitted that the trial court after considering the entire evidences and materials which are available on record has found that prima-facie case is made out against the revisionists and has rightly rejected the discharge application filed on behalf of revisionists.

Considered the rival submissions of learned counsel for the parties and perused the record.

For ready reference Section 227 Cr.P.C. is quoted herein below:-

"227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

From bare perusal of Section 227 Cr.P.C., that if upon consideration of Police report and documents collected during investigation and after hearing accused as well as prosecution the Court found that there is no sufficient ground for proceeding against the accused, the Court can discharge the accused. The approach to be adopted by the Court while exercising the power of discharge is considered by the Hon'ble Apex Court in the case of **Onkar Nath Mishra and others Vs. State (NCT of Delhi) and another, 2008 2 SCC 561**. The relevant paragraph No.11 is quoted herein below:-

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the

factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

The Hon'ble apex Court in the case of ***State of Tamil Nadu Vs. N. Suresh Rajan and others*** reported in **2014 (11) SCC 709**, has held that at the time of deciding the application for discharge, the Court is not expected to go deep into the matter and consider the entire evidence and material which are available on record. The relevant paragraph 29 is quoted below:-

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

The Hon'ble Apex Court in the case of ***State of M.P. vs. Mohanlal Soni*** reported in **(2000) 6 SCC 338** has held that at the time of framing of charges the Court has to prima facie consider whether there is sufficient ground against the accused or not and the Court is not required to consider the evidence in detail and appreciate evidence to conclude that there are sufficient materials for conviction of the accused. Only prima facie satisfaction of learned trial court is required at the time of framing of charges. Relevant paragraph 7 is quoted herein below:-

"7. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

It is well settled law by Hon'ble Supreme Court in series of cases that at the time of framing of charges the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused or not. The Court is not required to appreciate the evidence and materials, which are available on record to reach at the conclusion for convicting the accused. If the Court is satisfied that a prima facie case is made out against the accused and there is sufficient ground for proceeding further, then the charges are to be framed.

From the record, it is apparent that the first information report was lodged promptly on the same day against the revisionists and the revisionists are named in the first information report. Four persons were received gun shot injury in the incident. The Investigating Officer during investigation had recorded the statement of informant, injured witnesses and other independent witnesses and found that revisionists have committed crime as alleged in the first information report and as such, had submitted charge sheet against the revisionists.

The discharge application filed by accused-revisionists was rejected by the learned Sessions Judge by a detailed order on relying the judgment of Hon'ble the Apex Court in the case of ***Palvinder Singh vs. Balvinder Singh, ACC 64(2009) Page 399 (SC)*** and after prima-facie satisfaction that there is sufficient evidence and material against the accused-revisionists for framing charge under Sections 307 I.P.C.

Learned counsel for the revisionists has failed to point out any illegality or infirmity in the impugned order rejecting the discharge application. No ground for interference is made out. The revision is liable to be dismissed.

The criminal revision is dismissed accordingly. Interim order, if any, stands discharged.

Order Date :- 5.12.2023

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