

Reserved

Court No. - 79

Case :- CRIMINAL REVISION No. - 2328 of 2023

Revisionist :- Parmanand Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Shailendra Kumar Singh

Counsel for Opposite Party :- G.A., Hari Prakash Mishra

Hon'ble Vipin Chandra Dixit, J.

This Criminal revision has been filed by the revisionist against the order dated 13.3.2023 passed by II Additional Civil Judge(Jr. Div.)/Judicial Magistrate, Kasganj in complaint Case No. 600 of 2022(Parmanand Singh vs. Manoj Kumar Gupta and others), Police Station Patiyali, District Kasganj, by which the complaint filed by the revisionist was rejected.

Heard Sri Shailendra Kumar Singh, learned counsel for the revisionist, learned AGA for the State and Sri Hari Prakash Mishra, learned counsel appearing on behalf of opposite party nos. 2 & 3, and perused the record.

Brief facts of the case is that the revisionist had filed an application under Section 156(3) Cr.P.C. on 19.10.2021 with the allegation that the opposite party no.2 namely, Manoj Kumar Gupta had taken Rs.5,00,000/- cash and ten tola gold ornaments with the assurance that they would be doing business in partnership and will share the profit earned in partnership and one agreement had also taken place in between them on 20.8.2020. It is further alleged in the application that despite repeated requests, neither profit of business was paid nor Rs.5,00,000/- and other gold ornaments were refunded by opposite party no.2. It is further alleged that on account of this enmity opposite party nos. 2 & 3 had reached the house of revisionist on 15.10.2021 and assaulted the revisionist and his wife with fists and kicks.

Learned Magistrate vide order dated 9.11.2021, instead of directing for registration of case at police station, has treated the application filed by the revisionist under Section 156(3) Cr.P.C. as a complaint case. The statement of revisionist was recorded under Section 200 Cr.P.C. and statement of witnesses of revisionist namely, Pradeep(P.W.-1) and Neha(P.W.-2) were recorded under Section 202 Cr.P.C. on 5.3.2022. After the statement of revisionist/complainant under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C., the learned Magistrate called for a report from the concerned police station vide order dated 30.8.2022. The learned Magistrate has wrongly mentioned that the statement of Vinay who appeared as P.W.-1 and Ram Nath who appeared as P.W.-2 were recorded under Section 202 Cr.P.C., whereas the revisionist had produced Pradeep and Neha as P.W.-1 and P.W.-2. The learned Magistrate has wrongly mentioned the name of Vinay and Ram Nath as P.W.-1 and P.W.-2 in its order dated 30.8.2022. The police had submitted its report on 20.2.2023, which is based on the statement of Vinay and Ram Nath that the application under Section 156(3) Cr.P.C. has been filed on incorrect facts. The police report further reflects that the opposite party no.2 had lodged an FIR against the revisionist, which was registered as Case Crime No. 326 of 2021 and only to create pressure upon opposite party no.2 the present application under Section 156(3) Cr.P.C. had been filed by the revisionist. The learned Magistrate had relied upon the police report dated 20.2.2023 and rejected the complaint of the revisionist vide order dated 13.3.2023, which is impugned in the present criminal revision.

It is submitted by learned counsel for the revisionist that the learned trial court has failed to consider that the application was filed by revisionist under Section 156(3) Cr.P.C. on 19.10.2021 which was registered as a complaint case vide order dated 9.11.2021, whereas the FIR was lodged by opposite party no.2 on 18.12.2021 and as such, there is no occasion for the revisionist to file application under Section 156(3) Cr.P.C. to create pressure upon

opposite party no.2 to compromise the matter. It is further submitted that revisionist who is complainant had produced Pradeep as P.W.-1 and Neha as P.W.-2, whereas the learned Magistrate in its order dated 30.8.2022 has referred Vinay as P.W.-1 and Ram Nath as P.W.-2. The police has also erred in submitting its report relying upon statement of Vinay and Ram Nath. Lastly, it is submitted that learned Magistrate without applying its judicial mind and without considering the evidence and materials which are available on record, has rejected the complaint, only on relying upon the police report which is against the facts of the case.

On the other hand, learned counsel appearing on behalf of opposite party nos. 2 & 3 submits that learned Magistrate after considering the entire evidence and materials which are available on record has rightly passed the order dated 13.3.2023 rejecting the complaint filed by the revisionist. The order of learned Magistrate is based on evidence and materials which are available on record and there is no illegality or irregularity in any manner.

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

Admittedly, the complaint was filed by the revisionist on 19.10.2021 which was registered as a complaint case on 9.11.2021 whereas the FIR was lodged by opposite party no.2 on 18.12.2021 after registration of complaint against opposite party no.2 and as such, learned Magistrate has erred in rejecting the complaint, holding that the complaint was filed only to create pressure upon opposite party no.2 to settle the case of Case Crime No. 326 of 2021. The record also shows that the revisionist who is complainant had produced Pradeep as P.W.-1 and Neha as P.W.-2 in support of his complaint and both the witnesses produced by the complainant have supported the case of the complainant. The police report is based on evidence of Vinay and Ram Nath, who were never produced by the complainant. Learned Magistrate had dismissed the complaint only on relying upon police report dated 20.2.2023 which is based on

evidence of Vinay and Ram Nath whereas the witnesses produced by the revisionist-complainant are Pradeep and Neha.

In view of above, the criminal revision is **allowed**. The order dated 13.3.2023 passed by II Additional Civil Judge(Jr. Div.)/Judicial Magistrate, Kasganj in Complaint Case No. 600 of 2022 is hereby set aside.

Learned Magistrate/concerned court is directed to pass a fresh order after considering the entire evidence and materials which are available on record, within a period of three months from the date of production of certified copy of this order, without being influenced by any observation made in this order, unless there is any legal impediment.

Order Date :- 1.11.2023
P.P.