

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 5607 of 2023

Petitioner :- Dinesh Shukla

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ashutosh Kumar Tiwari

Counsel for Respondent :- G.A.,Mahendra Kumar Shukla

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Ashutosh Kumar Tiwari, learned counsel for the petitioner, Sri Mahendra Kumar Shukla, learned counsel for respondent no. 2 and Sri R.K. Gupta, learned AGA for the State.

2. This petition has been filed with the submissions that on the basis of an FIR (case crime no. 407 of 2011) lodged under sections 323, 504, 452 IPC. The investigating officer, after investigation filed a chargesheet against the accused under sections 323, 504, 452 IPC. The investigating officer did not find sufficient evidence to file a chargesheet under section 452 IPC. The case proceeded and the accused persons were summoned and a charge under sections 323, 504, 506 IPC was framed. The prosecution produced PW1. Thereafter an application under section 216 Cr.P.C. was moved calling for addition of charge under section 452 IPC. The trial court heard the matter and allowed the same. The accused preferred a revision challenging the order of the Magistrate dated 30.07.2022. The revisional court dismissed the revision and affirmed the order of the trial court.

3. It is contended on behalf of the applicant/petitioner that the PW1, on the basis of whose examination-in-chief, the application under section 216 Cr.P.C. for addition of charge under section 452 IPC, has been allowed, was not an eye-witness, hence the order is arbitrary and illegal. The court could not have depended on the evidence of the witness, who was not an eye-witness.

4. The above submission is rebutted by the respondent no. 2. My attention has been drawn to the contents of the FIR, which was undisputedly lodged by Ram Naraian (father of the injured), he has stated in the FIR as below:-

मेरे लड़के तुशांत तिवारी को अकारण गाली गलौज करने लगे। जब मेरे लड़के ने गाली देने से मना किया , लात घूसों से भागने पर मेरे घर में घुस कर मारा मारा है। मैं 2.30 पर विद्यालय से घर खाना खाने गया था उस समय स्थिति बड़ी भयावाह थी किसी प्रकार विनती पूर्वक बचाया और पुनः परीक्षा कराने के लिए विद्यालय चला गया। "

It is argued that this portion of the FIR, amply shows that the first informant was also the eye-witness of the incident. It is further contended that the PW1 has categorically stated in his on oath statement that the incident took place inside the house and that his statement cannot be doubted at this stage.

5. I went through the order of the trial court. The trial court allowed the

application for addition of charge, on the basis of on oath statement given by PW1. At this stage, this disputed question cannot be decided whether actually PW1 saw the incident with his own eyes or his evidence was merely hearsay. Section 216 Cr.P.C. gives unlimited and unrestrained powers to the court concerned to add or alter the charge at any stage of proceeding. In this case, the court had a piece of evidence given by PW1, on oath. In this view of the matter, the order cannot be faulted. The revisional court considered the above provisions of law as well as the material on record and found no illegality, impropriety or irregularity in the order.

6. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law.

7. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.

8. I do not find any good ground to interfere with the orders passed by the courts below, in exercise of powers under Article 227 of the Constitution, therefore, it is **dismissed**.

9. A copy of the order be certified to the court concerned.

Order Date :- 7.11.2023

#Vikram/-