

Court No. - 79

Case :- CRIMINAL REVISION No. - 2810 of 2023

Revisionist :- Sudhakar Rai

Opposite Party :- State Of U.P. And 6 Others

Counsel for Revisionist :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.,Ajeet Srivastava

Hon'ble Vipin Chandra Dixit,J.

Heard Sri Upendra Upadhyay, learned counsel for the revisionist, learned A.G.A. for the State, Sri Ajeet Srivastava, learned counsel appearing on behalf of opposite party nos. 2, 3, 4 and 6 and perused the record.

It has been informed that opposite party nos. 5 and 7 have died after filing of the present criminal revision.

This criminal revision has been filed by the revisionist against the order dated 15.04.2023, passed by Special Judge, SC/ST (P.A.) Act, Ghazipur, in S.S.T. No. 97 of 2005 (State vs. Pappu and others), arising out of Case Crime No. 919 of 2002, under Sections 147, 323, 504, 506 I.P.C., Police Station Kotwali, District Ghazipur by which, the application filed by revisionist under Section 216 Cr.P.C. was rejected.

Brief facts of the case are that the revisionist had lodged a first information report against opposite parties, which was registered as Case Crime No. 919 of 2002, under Sections 147, 148, 307, 323, 504 I.P.C., Police Station Kotwali, District Ghazipur. The Investigating Officer after completing investigation has submitted charge sheet on 16.08.2002, under Sections 147, 323, 504 I.P.C. During trial, the prosecution has produced informant as PW-1, who has also stated that the accused persons have opened fire with the country made pistol upon the informant. After the statement of PW-1, the informant / revisionist had moved an application under Section 216 Cr.P.C. with the request to alter charge by adding Section 307 I.P.C., which was rejected by the impugned order.

It is submitted by learned counsel for the revisionist that as per allegation of first information report, the accused persons with the intention to kill have opened fire from country made pistol upon the informant. The informant in his statement as PW-1 before the trial court has also supported the contents of first information

report. The offence under Section 307 I.P.C. is made out against the accused persons, but the learned trial court had rejected the application filed under Section 216 Cr.P.C. to alter / add charge under Section 307 I.P.C.

From the evidence adduced by the prosecution, it is apparent that there was specific allegation in the first information report regarding firing against the accused persons / opposite parties herein and as per statement of PW-1, the accused persons have opened fire with the intention to kill the informant and as such, the ingredients of Section 307 I.P.C. are attracted.

The application filed by prosecution under Section 216 Cr.P.C. was rejected by learned trial court merely on the ground that informant had not received any gun shot injury, ignoring the evidence adduced by prosecution that there was intention of accused persons to kill the informant.

In view of above, the present criminal revision is **allowed** and the order dated 15.04.2023, passed by Special Judge, SC/ST (P.A.) Act, Ghazipur, in S.S.T. No. 97 of 2005 is set aside. The trial court is directed to decide the application filed by the revisionist under Section 216 Cr.P.C. (Paper No. 206-B) as fresh within a period of one month from today after affording opportunity of hearing to the parties concerned.

Order Date :- 24.11.2023
sailesh