

Court No. - 79

Case :- CRIMINAL REVISION No. - 2817 of 2023

Revisionist :- Yogendra Singh And 3 Others

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

Counsel for Revisionist :- Ashok Kumar Singh

Counsel for Opposite Party :- G.A., Bhagwati Prasad Dwivedi, Indresh Dubey

Hon'ble Vipin Chandra Dixit, J.

1. As per office report dated 28.7.2023, notice issued to opposite party no.2 was served personally. Despite service of notice no one has put in appearance on behalf of opposite party no.2.
2. Heard Sri Ashok Kumar Singh, learned counsel for revisionists, learned AGA for the State and perused the record.
3. This criminal revision has been filed by revisionists against the order dated 14.3.2023 passed by Judicial Magistrate-II, Hapur in Criminal Case No.7810 of 2022, arising out of Case Crime No.211 of 2021, under Sections 452, 427, 448, 120B, 380, 504, 506 I.P.C., P.S. Hafizpur, District Hapur, by which the discharge application filed by revisionists under Section 239 Cr.P.C. was rejected.
4. Brief facts of the case are that opposite party no.2 had lodged a F.I.R. on 2.11.2021 against her son namely Yogendra Singh and four other accused persons that they forcibly took the possession over the house of informant and also stolen the valuable articles from the house. The statement of informant was recorded under Section 161 Cr.P.C. in which she has supported the contents of F.I.R. The Investigating Officer has also recorded statement of other witnesses and after due investigation has submitted charge-sheet against the revisionists on 10.3.2022. One co-accused namely Kavindra was exonerated by the Investigating Officer. The revisionists had moved an application on 6.2.2023 under Section 239 Cr.P.C. on the ground that no offence against the revisionists is made out and they may be discharged. The discharge application filed by the revisionists was rejected by the learned trial court vide order dated 14.3.2023, which is impugned in the present criminal revision.
5. It is submitted by learned counsel for the revisionists that revisionists are innocent and have been falsely implicated in this case. It is further submitted that as per CDR the location of informant was at Shanti Swaroop Agriculture Inter College, Meerut Road, Hapur on 2.11.2021 from 9:28 A.M. to 1209 noon whereas as per averments of F.I.R. the incident was alleged to be occurred on 11:00 A.M.

and the place of incident is 15 Km. away from the place of location of informant. The Investigating Officer has not conducted fair investigation and with collusion of informant had submitted charge-sheet against the revisionists. The statement of informant was alleged to be recorded on 5.11.2021 in between 02:00 P.M. to 05:00 P.M. whereas the location of informant as per CDR was at Uttam Nagar, Delhi on 5.11.2021 in between 08:32:06 to 23:44:32 which is much away from the place of incident. Lastly, it is submitted that CDR was summoned by the learned Magistrate but without considering the fact that as per CDR the location of informant was much away from the place of incident and it is a case of false implication of the revisionists, the discharge application was rejected in a very casual manner.

6. On the other hand, learned A.G.A. has submitted that learned Magistrate after considering the entire evidence and materials which are available on record and after recording prima facie satisfaction that the revisionists have committed the offence as alleged in the F.I.R., has rightly rejected the discharge application. It is further submitted that call details record of the mobile of informant being electronic record and was not proved in terms of Section 65(B) of the Indian Evidence Act and at this stage the accused cannot be discharged on the basis of CDR. The presence of informant at the place of incident at the relevant time is a subject matter of evidence which can be considered after the evidence adduced by the parties.

7. Considered rival submission of learned counsel for the parties and perused the record. For ready reference Section 239 Cr.P.C. is reproduced as under:-

"239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

8. 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."

9. 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."

10. 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."

11. 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.

12. The discharge application filed by the revisionists was rightly rejected by the learned Trial Court after prima facie satisfaction that there is sufficient evidence

and material against the accused revisionists for framing charge under Sections 452, 427, 448, 120B, 380, 504, 506 I.P.C.

13. Learned counsel for 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.

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

Order Date :- 1.11.2023

Kpy