

Court No. - 79

Case :- CRIMINAL REVISION No. - 3470 of 2023

Revisionist :- Vinay Singh

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

Counsel for Revisionist :- Jitendra Kumar Upadhyay

Counsel for Opposite Party :- G.A., Shailendra Kumar Rai

Hon'ble Vipin Chandra Dixit, J.

1. This criminal revision has been filed by the revisionist against the order dated 17.06.2023 passed by Additional Sessions Judge/Fast Track Court, Court No.2, Ghazipur in Session Trial No. 825 of 2022 (State Vs. Bindu Devi and Others) by which discharge application filed by revisionist was rejected.

2. Heard Sri Jitendra Kumar Upadhyay, learned counsel for the revisionist, learned A.G.A. for the State and Sri Shailendra Kumar Rai, learned counsel for the opposite party no.2 and perused the record.

3. The brief fact of the case is that the first information report was lodged by opposite party no.2 on 10.04.2022 with the allegation that the informant was in love relationship with revisionist Vinay Singh but he was going to marry with some other lady, which was protested by the informant, due to which she has been beaten by accused Vinay Singh, his mother and one Neeraj Singh. The first information report was registered as Case Crime No. 0076 of 2022, under Sections 323, 504, 506, 452, 354(B) in Police Station-Nonehara, Ghazipur. The statement of informant and other witnesses were recorded by the Investigating Officer, in which they have supported the prosecution case. The victim in her statement recorded under Section 164 Cr.P.C. has specifically stated that there was physical relationship for last 17-18 years. The Investigating Officer after completing investigation had found sufficient material against the accused persons had submitted charge sheet under Sections 325, 504, 506, 452, 354B, 376 I.P.C. against the revisionist. Learned Magistrate has taken cognizance and summoned the revisionist in the aforesaid case.

4. During pendency of trial, the revisionist had moved an application under Section 227 Cr.P.C. on 12.10.2022 on the ground that the revisionist had not committed any offence as alleged first information report. It is further submitted that from the bare perusal of statement of victim/informant under Section 161 and 164 Cr.P.C., it is apparent that the informant is major and physical relation was developed with the consent of informant and no offence under Section 376 I.P.C. is made out against the revisionist.

5. It is submitted by learned counsel for the revisionist that it is a case of false implication of revisionist and it is admitted fact that there was a love relation in between revisionist and informant. Since the informant/victim is major and physical relations were developed with the consent of victim as such no offence under Section 376 I.P.C. is made out against the revisionist. The learned court below has committed gross illegality in rejecting the discharge application vide order dated 17.06.2023, which is impugned in the present revision.

6. On the other hand, learned counsel appearing on behalf of informant submits that the revisionist has committed fraud with the informant and physical relations were developed on false assurance of marriage but later on the revisionist has refused to marry with the victim/informant. It is further submitted that learned trial court after considering the entire evidence and material which were collected during investigation has prima facie found that there is cogent evidence against the revisionist and as such has rightly rejected the discharge application. The order passed by learned trial court rejecting the discharge application is based on evidence and materials which were collected during investigation and there is no illegality or irregularity in any manner. Lastly, it is submitted that the charges against the revisionist/accused were framed by learned trial court on 19.9.2023 and as such, the present criminal revision is not maintainable and is liable to be dismissed.

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

8. 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.

9. 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."

10. 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."

11. 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."

12. 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.

13. Learned counsel for the revisionist 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 :- 18.10.2023

Virendra