

Court No. - 50

Case :- CRIMINAL REVISION No. - 3532 of 2022

Revisionist :- Smt. Baby

Opposite Party :- State Of U.P. And 4 Others

Counsel for Revisionist :- Ashutosh Kumar Mishra

Counsel for Opposite Party :- G.A., Pankaj Kumar Mishra

Hon'ble Ram Manohar Narayan Mishra, J.

Heard learned counsel for the revisionist, learned counsel for opposite party Nos.2 to 5, Sri Yogendra Singh, learned AGA for the State and perused the material placed on record. Pleadings have already been exchanged between the parties.

Instant criminal revision has been preferred against the impugned judgement and order dated 4.6.2022, passed by learned Additional District and Sessions Judge, (POCSO Act), Aligarh in Compliant Case No.32 of 2021, (Smt. Baby vs. Shivam And others), under Sections 147, 323, 452, 354, 376, 504, 506 IPC & Section 3/4 of POCSO Act, Police Station Kotwali Nagar, District Aligarh. By impugned order, learned court below has summoned accused Shivam to face trial under Sections 452, 323, 354-Kha IPC and Section 7/8 of POCSO Act but refused to issue process against other named accused persons in complaint. Feeling aggrieved by the impugned order, the informant/complainant has preferred present revision before this Court with a prayer to summon other named accused persons in complaint.

Learned counsel for the revisionist submitted that the factual matrix of the case are that the applicant/revisionist filed an application under Section 156(3) Cr.P.C. before the court of Special Judge, POCSO Act, on 26.4.2021 with prayer to direct the SHO concerned to register a case and investigate into the allegations made against the named accused persons therein. The application was initially dismissed by the court below vide order dated 20.4.2021. After dismissal of application under Section 156(3) Cr.P.C., the informant filed a criminal complaint before the trial court on 26.4.2021, in which statement of complainant and victim was recorded under Sections 200 and 202 Cr.P.C. to the effect that as many as five named accused persons accompanied by two unknown persons was barked into the room of informant in inebriated state at around 10:00 PM, where complainant was

sleeping alongwith her minor daughter. The accused persons grabbed the informant and her daughter. Shivam started misbehaving with the daughter of complainant and when they objected to this, the accused persons have beaten them and torn their cloths. Accused Shivam with assistance of other accused persons laid the victim on floor and with a view to commit rape on her, inserted finger inside her private part. The husband of the complainant and other family members were sleeping in ground floor came on the spot after hearing, cries of the complainant and victim. He further submitted that the complainant supported her complaint version in her statement recorded under Section 200 Cr.P.C. but the learned trial court has summoned only accused Shivam and refused to summon other persons on the ground that the victim has not named other accused persons in her statement recorded under Section 202 Cr.P.C. He further next that the finding recorded by the court below with regard to other named accused persons is misconceived. There is consistency between complaint and statement recorded under Section 200 and 202 Cr.P.C. but the court below refused to issue process against respondent Nos.2 to 5 arbitrarily.

Per contra, learned counsel for the opposite party Nos.2 to 5 submitted that the revision is misconceived. The victim has not stated anything against the opposite party Nos.2 to 5 in her statement recorded under Section 202 Cr.P.C. before the court below. There is no injured report in support of the version that the opposite party Nos.2 to 5 has assaulted the victim and complainant. No medical examination of the victim was conducted after the incident. The complainant has filed present complaint with false assertion. Even the accused Shivam, who has been summoned by impugned order, is close family member of the victim, being son of Nahar Singh, who is elder uncle of the victim. The revisionist and private respondents belongs to same family and opposite party Nos.2 to 5 and accused Shivam are falsely implicated in the complaint due to land dispute. The application under Section 156(3) Cr.P.C. was dismissed by the court below at initial stage on the basis of report of police station concerned, in which it is stated that the applicant is in the habit of filing frequent complaints and criminal cases against accused persons. The complainant version is unnatural and the complaint is a product of false assertion. The opposite party Nos.2 to 5 have given details of similar criminal cases lodged at the instance of complainant and her husband against the opposite parties. The opposite party No.2 Nahar Singh, has filed a detailed affidavit, in which all the relevant facts are mentioned. Even an interim order was passed in favour of

the accused Shivam also in application under Section 482 Np.23771 of 2022, vide order dated 17.8.2022. In other criminal cases lodged at the instance or behest of the complainant also, interim order has been passed by this Court in favour of the private respondents.

Learned AGA also submitted that there is no illegality or factual infirmity in the impugned order passed by the learned court below whereby the process has been issued against accused Shivam, as he has been attributed specific role in the offence by the victim in her statement recorded under Section 202 Cr.P.C.

The revisionist and private respondents belongs to same extended family and this is the admitted fact that there is land enmity between the parties and there are so many criminal litigation are pending between the parties. The victim in her statement under Section 202 Cr.P.C. has levelled specific allegations against Shivam and she has not attributed any role to other named accused persons in the complaint. Even the complainant in her statement recorded under Section 202 Cr.P.C. has assigned specific role of commission of rape as defined under Section 375(b) IPC in respect of accused Shivam. Although, she has stated that other accused persons assisted accused Shivam in this filthy act. Accused Nahar Singh and Shivam are father and son in relation. Considering the rival submissions made by learned counsel for the parties and the evidence adduced during enquiry under Section 200 and 202 Cr.P.C. in present case, in particular, the statement of the victim recorded under Section 202 Cr.P.C., I find no illegality, irregularity or perversity in the impugned order passed by the court below.

Accordingly, present criminal revision stands **dismissed**.

Order Date :- 31.10.2023

Kamarjahan