

Court No. - 79

Case :- CRIMINAL REVISION No. - 3558 of 2023

Revisionist :- Tota Ram

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Rajeev Kumar Saini

Counsel for Opposite Party :- G.A.

Hon'ble Vipin Chandra Dixit,J.

1. As per office report dated 11.10.2023, notice issued to opposite party no. 2 has been served personally but despite service of notice on one has put in appearance on behalf of opposite party no. 2.
2. Heard Sri Rajeev Kumar Saini, learned counsel for the revisionist, learned A.G.A. for the State and perused the record.
3. This criminal revision has been filed by the revisionist against the order dated 07.04.2023, passed by Additional Sessions Judge / Additional Special Judge (P.O.C.S.O. Act), Court No. 2, Mathura, in Special Sessions Trial No. 4075 of 2018 (State of U.P. vs. Tota Ram and Another), arising out of Case Crime No. 466 of 2018, under Sections 363, 366, 354 I.P.C., Section 7/8 P.O.C.S.O. Act, Police Station Govind Nagar, District Mathura, by which the discharge application filed by the revisionist was rejected.
4. Brief facts of the case are that the first information report was lodged by opposite party no. 2 on 18.07.2018 against the revisionist with the allegation that on 13.07.2018, the revisionist has enticed away the minor daughter of informant aged about 14 years and case was registered as Case Crime No. 0466 of 2018, under Sections 363, 366 I.P.C. and Section 7/8 P.O.C.S.O. Act in Police Station Govind Nagar, District Mathura. The Investigating Officer during investigation has recorded the statement of informant, victim and other witnesses. The informant in his statement recorded under Section 161 Cr.P.C. and victim in her statements recorded under Sections 161 and 164 Cr.P.C. have supported the prosecution case. The Investigating Officer after completing the investigation has submitted charge sheet against the revisionist Tota Ram on 06.08.2018 under Sections 363, 366, 342, 354, 368 I.P.C. and Section 7/8, 16/17 of the P.O.C.S.O. Act. The learned Magistrate has taken cognizance and summoned the revisionist vide order dated 01.11.2018.

5. It is submitted by learned counsel for the revisionist that the revisionist has moved an application for discharge on 05.08.2022 on the ground that the revisionist has not committed any offence as alleged in the first information report and it is a case of false implication. It is further submitted that the Investigating Officer without conducting fair investigation and without considering the statements of informant, victim and other witnesses and ignoring the entire materials, which were collected during investigation had submitted charge sheet against revisionist. The victim was not recovered from the possession of revisionist and he was arrested from his house. The victim in her statement recorded under Sections 161 and 164 Cr.P.C. has not levelled any allegation regarding kidnapping and molestation against the revisionist. Lastly, it is submitted that the learned trial court without considering the entire evidence collected during investigation and without applying his judicial mind had rejected the discharge application of the revisionist, vide order dated 07.04.2023.

6. On the other hand, learned A.G.A. appearing on behalf of State has submitted that the revisionist was named in the first information report and the victim had also levelled allegation against the revisionist that she was enticed away by revisionist. The informant and other witnesses have also levelled allegation of kidnapping against the revisionist. The discharge application filed by revisionist was rightly rejected by the learned trial court and there is no illegality or irregularity in any manner. Lastly, it is submitted that the learned trial court had recorded finding that prima-facie case is made out against the revisionist and after prima-facie satisfaction, has rightly rejected the discharge application moved by the revisionist.

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

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. From the record it is apparent that the F.I.R. was lodged by opposite party no.2 with the allegation that the daughter of the informant had enticed away by the revisionist. The Investigating Officer after due investigation had found that the offence against the revisionist under Sections 363, 366, 342, 354, 368 I.P.C. and Section 7/8 / 16/17 of the P.O.C.S.O. Act. are made out and had submitted the charge-sheet against the revisionist. The discharge application filed by accused-revisionist was rejected by the learned Sessions Judge by a detailed order after prima-facie satisfaction that there is sufficient evidence and material against the accused-revisionist for framing charge under Sections 363, 366, 342, 354, 368 I.P.C. and Section 7/8 / 16/17 of the P.O.C.S.O. Act.

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 :- 12.10.2023

sailesh