

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9389 of 2023

Petitioner :- Noor E Mustaqeem

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- D.S. Mani Tripathi, R.P. Mishra

Counsel for Respondent :- G.A., Vijay Bahadur

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri R.P. Mishra, learned counsel for the petitioner and Sri L.D. Rajbhar, learned AGA for the State.

2. This petition has been filed by the petitioner with a prayer to set aside the order dated 29.05.2023 passed by the Additional Sessions Judge, Court no. 8, Aligarh in criminal revision no. 251 of 2022 (Noorzzama and another vs. State of UP) and in criminal revision no. 41 of 2023 (Smt Shabana Nizam and others vs. State of UP), whereby the revisional court passed the following order:-

"15. The instant revision is hereby allowed and the impugned order dated 17.05.2022 passed by Ld. Addl. Civil Judge (J.D.) Court No. 04, Aligarh in Criminal Case No. 925/2011 is hereby set aside. The Ld. Magistrate concerned is directed to pass appropriate order in the light of observations made in above paras. Records of the Ld. Court below alongwith copy of this order be transmitted back to the Ld. Court concerned forthwith. The instant revision No. 251/2022 & 41/2023 stands disposed of accordingly. Let the matter be placed before the Ld. Court concerned on 26.06.2023 with the direction to the parties to remain present there. The instant criminal revision Nos. 251/2022 & 41/2023 stands disposed of. Copy of this order be placed in Crl. Revision No. 41/2023 as well."

3. Learned counsel for the petitioner submits that the revisional court exceeded its limit and recorded the findings on some facts which it could have done, being the court of revision.

4. Learned AGA submits that the learned revisional court has not given any finding of fact and has just recorded some observations in the light of the material before it, hence, the order of revisional court cannot be assailed on this ground. It is further contended that the petitioner as a complainant has an opportunity to put his side of the story before the learned trial court below and the order passed by the revisional court has not said that prima facie case is made out or not, hence the order is legally sound.

5. I went through the order passed by the revisional court and the material on record including the allegations as contained in a complaint and the material produced by the complainant. When specifically queried from the petitioner as to what are the findings of facts recorded by the revisional court, para no. 14 has been pointed out. I went through para no. 14 of the order of the revisional court, the revisional court has made certain observations and has not given any finding on any particular factual point.

6. In the facts and circumstances of the matter, it is observed that the learned trial court has to make its own assessment of the matter and it shall be at liberty to decide the question of summoning on the basis of material before it in the light of the observations of the revisional court. Subject to such observations, this petition is finally **disposed of**.

Order Date :- 13.12.2023/#Vikram/-