

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9112 of 2023

Petitioner :- Rajendra Kumar Shukla

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Abha Gupta

Counsel for Respondent :- G.A.,Ashwani Kumar Mishra,Priti Choudhary,Vivek Srivastava

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Ms. Abha Gupta, learned counsel for the petitioner, Sri Vivek Srivastava, learned counsel for the respondent and learned A.G.A. for the State.

2. This petition under Article 227 has been filed claiming following reliefs.

(i) To issue writ or direction to stay the effect and operation of impugned order dated 23.05.2022 passed by M.M.Xth Kanpur Nagar in Complaint Case No. 80503 of 2021 and order dated 22.06.2023 passed by Additional Session Judge, Kanpur Nagar in Criminal Revision no. 216 of 2022.

(ii) To issue a writ order or direction to set aside the impugned order dated 23.05.2022 passed by M.M.Xth Kanpur Nagar in Complaint Case no. 80503 of 2021 and order dated 22.06.2023 passed by Additional Session Judge, Kanpur Nagar in Criminal Revision No. 216 of 2022.

3. The submission of the petitioner is that he filed a Complaint Case No. 80503 of 2021 (Rajendra Kumar Vs. Sunil Srivastava and 2 others) under sections 452, 323, 427, 504, 506, 406 and 392 I.P.C., with the allegations in nutshell that he is a tenant residing in a house owned by Vimal Kumar Srivastava and that Vimal Kumar Srivastava borrowed Rs. 14,00,000/- in cash for the purpose of treatment of his wife and for payment of loans taken by him. Both of them died respectively in June, 2020 and December, 2020. Therefore, the amount of Rs. 14,00,000/- could not be repaid to him. On 22.06.2021, at about 8.00 PM, real brother of Vimal Kumar Srivastava and his nephews intruded in his house, abused him in filthy language when the complainant demanded his Rs. 14,00,000/- from them. They asked the complainant to vacate the house. When he refused, all of them assaulted him and also vandalized his house. They took away two files which contained all the papers regarding money borrowed by late Vimal Kumar Srivastava and also removed Rs. 1000/- from his pocket and threatened to dispossess him from the house.

4. The learned Magistrate proceeded to record the evidence under section 200 and 202 Cr.P.C. and also got the matter investigated into by the police under section 202 (1) Cr.P.C. The Magistrate heard the complainant and after perusing the material on record, formed an opinion that there was no good ground to summon the accused persons and he dismissed the complaint under

section 203 Cr.P.C. The complainant preferred a revision No. 216 of 2022. The learned Additional Sessions Judge dismissed the same and affirmed the order of the trial court. The petitioner has challenged both the orders, one passed by the trial court and other passed by the revisional court.

5. One of the vehement contentions of the petitioner is that he was not given a proper opportunity to be heard and secondly, the order was passed without considering the evidence. It is argued that there was enough evidence to show that *prima facie* the offence under sections 452, 323, 427, 504, 506, 406 and 392 I.P.C. was made out. My attention has been drawn to the statements given by the witnesses to support the above arguments.

6. The contentions of the petitioner are deflected by the respondent submitting that the revisionist was afforded proper opportunity to place his side and to submit his arguments.

7. My attention has been drawn to the order sheet dated 29.05.2023 in which it is clearly mentioned that both the sides were heard. The matter was posted for passing the orders. The subsequent order sheets shows that the order could not be pronounced for certain reasons therefore, the court again fixed the matter for arguments. On the date fixed, i.e. on 17.06.2023, the counsel for the opposite side appeared and the revisionist absented himself. The revisional court therefore, passed an order giving him opportunity to place his arguments between 10.30 to 11.30 on any working day before the date fixed for order. The relevant portion of the order sheet is as below:

"17.06.2022

पुकार पर पुनरीक्षणकर्ता अनुपस्थित, कोई स्थगन प्रार्थना पत्र भी नहीं आया, विपक्षी के विद्वान अधिवक्ता उपस्थित हैं लंच के बाद पुनः पेश हो। 3.00 बजे पुकार पर पुनरीक्षण कर्ता के विद्वान अधिवक्ता अनुपस्थित हैं विपक्षी सुनील कुमार श्रीवास्तव मय विद्वान अधिवक्ता उपस्थित, विपक्षी को सुना वास्ते निर्णय 22.06.2023 को पेश हो। पुनरीक्षण कर्ता इस मध्य किसी भी कार्य दिवस में 10.30 से 11.30 बजे के मध्य अपना मौखिक/लिखित पक्ष रख सकते हैं।"

8. From bare perusal of the order sheets, it is quite clear that revisionist was in fact afforded sufficient opportunity to argue. And in fact, though, he was already heard once on 29.05.2023, but was given further opportunity to argue and he did not utilize the same.

9. Another contention of the petitioner is that, *prima facie*, an offence is made out against the opposite side but the court ignored the evidence on record and wrongly dismissed the complaint case and that order of the revisional court as well as the trial court are arbitrary, against law and facts.

10. This High Court in **Criminal Appeal No. 9188 of 2022 (Dr. Divya Nanda Yadav and Another Vs. State of U.P. and Another)**, elaborated the meaning of sufficient ground to proceed occurring in section 203 and 204 (1) of Cr.P.C. The High Court said that the "*prima facie* case must be construed to mean *prima facie* satisfaction" and in other words, the Magistrate is obliged to proceed only if he finds that there is sufficient ground for doing the same.

11. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. This Court in exercise of its supervisory jurisdiction, is not expected to go deep and reappreciate the evidence unless there is some perversity or glaring error.

12. I went through both the orders. The court concerned applied their judicial mind, considered the evidence and did not find sufficient ground to proceed. The orders are based on material on record. I do not find any good ground to interfere in the impugned orders in exercise of power under Article 227 of Constitution of India, the petition lacks merit and is therefore **dismissed**.

Order Date :- 2.11.2023

Sumit Kumar