

RESERVED

Court No. - 79

Case :- CRIMINAL REVISION No. - 4249 of 2022

Revisionist :- Dr. Pradeep Sharma

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

Counsel for Revisionist :- Ronak Chaturvedi

Counsel for Opposite Party :- G.A.,Dileep Kumar Pandey

Hon'ble Vipin Chandra Dixit,J.

1. This criminal revision has been filed by the revisionist against the order dated 06.09.2022, passed by Additional District and Sessions Judge, Court No. 15, Meerut, in Sessions Trial No. 1085 of 2021 (State vs. Pradeep Sharma and others), arising out of Case Crime No. 30 of 2021, under Sections 147, 148, 302, 342, 504, 506, 34 I.P.C., Police Station Partapur, District Meerut, by which, the discharge application filed by the revisionist was rejected.

2. Heard Sri Ronak Chaturvedi, learned counsel for the revisionist, learned A.G.A. for the State, Sri Dileep Kumar Pandey, learned counsel appearing on behalf of opposite party no. 2 and perused the record.

3. Brief facts of the case is that the opposite party no. 2 had lodged a first information report on 16.01.2021 against the revisionist, his wife and son with the allegations that they were abusing the son of informant namely Vikash @ Aakash aged about 18 years and assaulted with lathi, stick and iron rod and his son had received grievous injuries. The case was registered as Case Crime No. 0030 of 2021, under Sections 323, 504, 307, 352, 506, 325 I.P.C., in Police Station Partapur, District Meerut.

4. The Investigating Officer has recorded the statement of informant under Section 161 Cr.P.C. who has supported the prosecution case. The Investigating Officer had also recorded the statements of independent witnesses namely Pramod, Krishna and Preetam, who have also supported the prosecution case and it has been stated that the revisionist, his brother

Ajay and one Mukesh who were armed with country made pistol and iron rod have assaulted the son of informant. During treatment, the son of opposite party no. 2 died on 28.01.2021.

5. The Investigating Officer after completing the investigation has submitted charge sheet on 29.04.2021 against revisionist namely Dr. Pradeep Sharma, his wife Smt. Anita Sharma, brother Ajay @ Arjun and one Mukesh son of Ram Swaroop under Sections 147, 148, 302, 342, 504, 506, 34 I.P.C. The learned Magistrate had taken cognizance and summoned the revisionist along with other co-accused persons to face trial.

6. The revisionist had moved an application under Section 227 Cr.P.C. for discharge on 08.08.2022 claiming discharge on various grounds. It is pleaded in the discharge application that the revisionist is innocent person and has been falsely implicated in this case. The discharge application was rejected by trial court vide order dated 6.9.2022, which is impugned in the present criminal revision.

7. Learned counsel for the revisionist has submitted that there is no external injury to the deceased and as per postmortem report the cause of death is septicaemia due to chronic illness of multiple organs. The Investigating Officer without conducting fair investigation has submitted charge sheet against the revisionist and other accused persons. The Investigating Officer did not collect the C.C.T.V. footage of place of incident and even had not collect the C.D.R. of revisionist nor verified the location of revisionist. There are material contradiction in the statements of informant and other witnesses and postmortem report of the deceased was also not supported the prosecution case. A false recovery of iron rod alleged to be used for committing the crime has been shown from the possession of co-accused Mukesh. Lastly, it is submitted that the Investigating Officer has failed to consider that death was not occurred on account of any physical injury received by the deceased. No offence

against the revisionist is made out, but the Investigating Officer in a very casual manner has submitted charge sheet against the revisionist. The learned trial court has also erred in rejecting the discharge application filed by the revisionist, vide order dated 06.09.2022.

8. On the other hand, learned counsel appearing on behalf of opposite party no. 2 submits that it is a case of murder of young son aged about 18 years of the informant. The Investigating Officer after conducting fair investigation and after recording the statements of independent witnesses has submitted charge sheet against the revisionist and other co-accused. The discharge application filed by the revisionist was rightly rejected by the learned trial court after considering the entire evidences and materials which were collected by the Investigating Officer during investigation. It is further submitted that the grounds taken by the revisionist in his discharge application can be considered after recording the statements of witnesses before the Court. Lastly, it is submitted that the trial court has already framed charges against the revisionist and other co-accused persons on 24.05.2023 and as such, the present revision filed on behalf of revisionist against the rejection of discharge application has become infructuous and is liable to be dismissed.

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

10. 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.”

11. Section 227 Cr.P.C. provides 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."

12. 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."

13. 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."

14. 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 that 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.

15. From the record, it is apparent that the revisionist is named in the first information report and the Investigating Officer after due investigation had found sufficient materials against the revisionist and has submitted charge sheet against the revisionist and other co-accused persons. The trial court after recording prima-facie satisfaction that there are sufficient evidence against the revisionist, had rejected the discharge application.

16. 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.

17. The criminal revision is dismissed accordingly.

18. Interim order, if any, stands discharged.

Order Date :- 31.10.2023

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