

Court No. - 79

Case :- CRIMINAL REVISION No. - 5023 of 2023

Revisionist :- Smt. Anchal Sharma

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

Counsel for Revisionist :- Gaurav Kakkar

Counsel for Opposite Party :- G.A.

Hon'ble Vipin Chandra Dixit,J.

1. Heard Sri Gaurav Kakkar, learned counsel for the revisionist, learned A.G.A. for the State and perused the record.
2. This criminal revision has been filed by the revisionist against the order dated 16.05.2023, passed by Chief Judicial Magistrate, Baghpat, in Complaint Case No. 3397 of 2022 (Dr. Gajendra Singh Nodal Officer P.C.P.N.D.T. vs. Dr. Harendra Pal Singh and another), under Sections 2 (E, G), 3(2), 23 and 29 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, by which the discharge application filed by the revisionist was rejected.
3. Brief facts of the case are that the opposite party no. 2 who is Nodal Officer of P.C.P.N.D.T. Act, 1994 in the office of Chief Medical Officer, Baghpat had received a complaint made by Sri Vinod Nirwal against Dr. Harendra Pal Singh on 08.07.2022 with the allegation that the registration certificate of Dr. Harendra Pal Singh bearing Registration No. 75682 is forged and fabricated documents, which is belonging to one Smt. Vineeta Varshney. An enquiry was conducted by the office of Chief Medical Officer, Baghpat and as per information received from Registrar, U.P. Medical Council, Lucknow, the Registration No. 75682 is not belonging to Dr. Harendra Pal Singh and some other doctor was got registered on the aforesaid registration number. The complaint was filed by opposite party no. 2 on 30.08.2022 in the Court of Chief Judicial Magistrate, Baghpat, which was registered as Complaint Case No. 3397 of 2022. It is alleged in the complaint that the revisionist Smt. Anchal Sharma is the owner of S.C. Ultrasound Centre situated in front of police station and Dr. Harendra Pal

Singh is doing ultrasound work of aforesaid ultrasound centre. The S.C. Ultrasound Centre was got registered on the basis of forged and fabricated registration certificate of Dr. Harendra Pal Singh. It is further alleged in the complaint that the revisionist had installed ultrasound machine at the centre without any prior intimation to the office of Chief Medical Officer, Baghpat.

4. The learned Magistrate after considering the averments of complaint and other evidences produced along with complaint had summoned the revisionist and co-accused Dr. Harendra Pal Singh under Sections 2 (E, G), 3(2), 23 and 29 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, vide order dated 30.08.2022.

5. The revisionist had challenged the summoning order by filing Application U/s 482 No. 32984 of 2022, which was disposed of vide order dated 14.12.2022 permitting the revisionist to approach the court concerned by filing discharge application. The revisionist had filed discharge application through counsel on 20.12.2022, which was rejected by Chief Judicial Magistrate, vide impugned order dated 16.05.2023.

6. It is submitted by learned counsel for the revisionist that the revisionist is innocent and has been falsely roped in the present case by opposite party no. 2. The complaint has been filed on altogether incorrect facts only to harass the revisionist. The revisionist had not committed any offence as alleged in the complaint and she engaged Dr. Harendra Pal Singh under bona-fide belief that the registration certificate bearing No. 75682 is a genuine document. Dr. Harendra Pal Singh was engaged by several other nursing homes and medical centres and as such, there was no occasion to the revisionist to disbelieve the registration certificate produced by Dr. Harendra Pal Singh. Lastly, it is submitted that no offence as alleged in the complaint is made out against the revisionist and the revisionist herself was cheated by Dr. Harendra Pal Singh. The

revisionist has not produced any forged or fabricated documents for registration of S.C. Ultrasound Centre. The learned trial court has committed gross illegality for not considering the grounds taken by the revisionist in her discharge application that the revisionist has not committed any offence as alleged in the complaint but in a very casual manner, the discharge application filed by the revisionist was rejected by the learned trial court.

7. On the other hand, learned A.G.A. has submitted that the S.C. Ultrasound Centre was got registered by revisionist after giving notary affidavit stating therein that Dr. Harendra Pal Singh is engaged as doctor in the said ultrasound centre for conducting the ultrasound of the patients and managed the ultrasound centre. The registration certificate of Dr. Harendra Pal Singh was found forged in the inquiry and as such, the revisionist and Dr. Harendra Pal Singh both have committed offence under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 and were rightly summoned by the learned trial court, vide summoning order dated 30.08.2022. The learned Magistrate after considering the entire evidences and materials which are available on record has recorded the finding that prima-facie case is made out against the revisionist and Dr. Harendra Pal Singh and has rightly rejected the discharge application filed by the revisionist.

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

9. 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."

10. 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."

11. 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."

12. 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.

13. From the record it is apparent that the complaint was filed by opposite party no. 2 and the learned Chief Judicial Magistrate after considering the entire evidence and materials, which are available on record had recorded his prima-facie satisfaction that the offence against the revisionist under Sections 2 (E, G), 3(2), 23 and 29 of the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 is made out, had rejected the discharge application.

14. 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.

15. The criminal revision is dismissed accordingly.

16. Interim order, if any, stands discharged.

Order Date :- 19.10.2023

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