

Court No. - 79

Case :- CRIMINAL REVISION No. - 4912 of 2023

Revisionist :- Mohan And 9 Others

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

Counsel for Revisionist :- Shadab Alam

Counsel for Opposite Party :- G.A., Sarvesh Kumar Dubey

Hon'ble Vipin Chandra Dixit, J.

This criminal revision has been filed by the revisionists against the judgment and order dated 19.8.2023 passed by Additional Sessions Judge, FTC-II, Mathura in Criminal Appeal No. 29 of 2021 by which the criminal appeal filed by opposite party no. 2 was allowed and the judgment and order dated 20.2.2021 passed by learned trial court in Criminal Case No. 2694 of 2019 was set aside and the matter was remanded to the Court below to frame charge under Section 120-B IPC and decide the case afresh after affording opportunity of hearing to the parties concerned.

Heard Sri Shadab Alam, learned counsel for revisionists, learned AGA for the State and Sri Sarvesh Kumar Dubey, learned counsel appearing on behalf of opposite party no.2.

Brief facts of the case is that opposite party no.2 had lodged a FIR against nine accused persons stating therein that opposite party no.2 is tenure holder of Khasra no. 244-A area 7.63 acre and Khasra No. 444 area 3.76 acre and is in possession over the same. The revisionists have got executed a sale deed of 9 acre land of opposite party no.2 on forged signature of opposite party no.2 through one imposter. The FIR was registered as Case Crime No. 114 of 1989 under Section 419, 420, 465, 467, 471 IPC. The investigating officer after due investigation had submitted charge-sheet against the revisionists. The Trial Court had taken cognizance and summoned the accused persons to face trial. The prosecution has produced Surendra Pratap Singh, Assistant Commissioner(Stamp), Gautam Buddh Nagar as P.W.-1 Govind Saran(informant) as P.W.-2, Ramesh Chandra Saxena as P.W.-3, Rajaram Maurya as P.W.-4, SI Shambhu Dayal as P.W.-5 and the accused persons had produced Raman Lal as D.W.-1.

The trial court after considering the entire material and evidence which are available on record has acquitted the accused persons vide judgment and order dated 20.2.2021 on the ground that as per allegation of prosecution, the sale deed was got executed by accused persons through imposter and the land of informant was grabbed through criminal conspiracy but no charge under Section 120-B IPC was framed against the accused persons.

The opposite party no.2 who is informant had preferred criminal appeal against judgment and order dated 20.2.2021 passed by Chief Judicial Magistrate, Mathura in Criminal Case No. 2694 of 2019, which was allowed by the learned appellate court. The lower appellate court is of the view that accused were acquitted by the trial court on the ground that the charge under section 120-B IPC was not framed, whereas the trial court is empowered to frame charge even at the stage of judgment. Once the trial court has recorded the finding that it is a case of criminal conspiracy then charge under section 120-B IPC should be framed and after affording an opportunity of hearing to the parties concerned, the case would be decided.

It is submitted by learned counsel for the revisionist that the trial court after considering the entire evidence and materials which are available on record has recorded finding that prosecution has failed to establish offence against accused persons and has rightly acquitted the revisionists, the lower appellate court has erred in allowing the criminal appeal preferred by informant. It is further submitted that during trial the informant has not raised any objection to frame charge under Section 120-B IPC and as such, the lower appellate court has committed gross illegality in allowing the appeal and directing the trial court to frame charge under section 120-B IPC and to decide the case as fresh.

On the other hand, learned counsel appearing on behalf of opposite party no.2 submits that nine acres land of opposite party no.2 was grabbed by accused persons/revisionists through forged sale deed which was executed by imposter with forged signature of informant. It is a case of criminal conspiracy and the trial court has committed error in acquitting accused persons only for the reason that charge under Section 120-B IPC was not framed. It is further submitted that it was the duty of the trial court to frame charge under Section 120-B IPC. It is a case of criminal conspiracy and the FIR was registered under Section 120-B IPC alongwith other sections and the investigating officer, after conducting fair investigation, had also submitted charge sheet against revisionists under Section 120-B IPC alongwith other sections. Lastly, it is submitted that the Court may alter or add any charge at any time before the judgment is pronounced.

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

The trial court has ample power to alter charge at any stage of proceeding before the judgment is pronounced. For ready reference Section 216 Cr.P.C. is reproduced herein below:-

Section 216 Cr.P.C. The Court may alter charge

- 1. Any Court may alter or add to any charge at any time before judgment is pronounced.*
- 2. Every such alteration or addition shall be read and explained to the accused.*
- 3. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the*

prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

4. If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

5. If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

The learned appellate court has rightly observed that the trial court has committed gross error in acquitting the accused persons only for the reason that charge under Section 120-B IPC was not framed against the accused persons whereas the trial court is empowered to frame charge under Section 120-B IPC. From the evidence and materials which are available on record, it is found that it is a case of criminal conspiracy and land of the informant was grabbed through forged sale deed executed by some imposter with forged signature of informant. The appellate court has rightly allowed the appeal preferred by informant directing the trial court to frame charge under section 120-B IPC and to decide the case after affording an opportunity of hearing to the parties concerned. Learned counsel for the revisionists has failed to point out any infirmity or illegality in the order impugned passed by lower appellate court. No ground for interference is made out.

The criminal revision is devoid of merits and is **dismissed** accordingly.

Order Date :- 12.10.2023

P.P./Sailesh