

Court No. - 79

Case :- CRIMINAL REVISION No. - 6077 of 2023

Revisionist :- Nadeem

Opposite Party :- State of U.P.

Counsel for Revisionist :- Kalpana Singh

Counsel for Opposite Party :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

1. This criminal revision has been filed against the order dated 11.10.2023 passed by Additional Sessions Judge (F.T.C.), Court No. 1, Firozabad in S.T. No. 460 of 2018 (State vs. Imran @ Naeem & Ors.) with S.T. No. 445 of 2017 (State vs. Nadeem & Ors.), under Sections 363, 328, 323, 506, 376D I.P.C. & Section 3/4 POCSO Act, Police Station Firozabad South, District Firozabad. By the impugned order, the learned trial Court has rejected the application 31B filed by the revisionist-accused to club S.T. No.460 of 2018 (State Vs. Imran and others) with S.t. No.445 of 2017 on the ground that both the cases have emanated from the same F.I.R. and both the trials/ proceeding in this Court separately. Hence, prayer is made to club both the session trials.

2. Learned counsel for the revisionist submitted that an F.I.R. Case Crime No.745 of 2016 was lodged. After investigation, one charge-sheet was submitted on 16.03.2017 against the four accused persons including the revisionist. The case was committed to the Court of Sessions being S.T. No.445 of 2017. Another charge-sheet was submitted on 27.07.2018 against five accused persons. This case was also committed to the Court of Sessions being Session Trial No.460 of 2018. It is further submitted that in S.T. No.445 of 2017, all the prosecution witnesses have been examined and statements of accused under Section 313 Cr.P.C. have also been recorded. While in S.T.

No.460 of 2018 only the informant P.W.-1 has been examined. It is next contended that since both the session trials have arisen out of the same crime number, therefore, the revisionist as well as the informant moved applications for clubbing both the session trials and for delivery of judgments jointly. However, the learned trial Court by the impugned order illegally and arbitrarily rejected the application without recording any cogent reasons. The impugned order is wholly illegal, arbitrary and unjustified and is based on erroneous and perverse findings. The impugned order has been passed without application of judicial mind. It is also contended that in separate S.T. No.460 of 2018, the evidence of all the prosecution witnesses has to be recorded de novo, so there is likelihood of contradictions, discrepancies and variations in the evidence, as such the possibility of two different judgments in two separate trials arising out of the same F.I.R. and same charge-sheet cannot be ruled out. So, it is appropriate and proper to club and consolidate both the session trials and the same are liable to be decided jointly as per judicial propriety. The impugned order is not sustainable in the law.

3. The learned AGA opposed the prayer and submitted that there is no illegality in the impugned order.

4. It is not disputed that charge-sheet of Session Trial No.445 of 2017 was filed on 19.09.2017. The order-sheet reveals that evidence in this case was concluded on 14.11.2018 and after several adjournments, ultimately, statements of accused under Section 313 Cr.P.C. have been recorded on 07.08.2020 and now case is pending for arguments, while in other Session Trial No.460 of 2018, charge-sheet was submitted on 19.09.2018, charges were framed on 15.08.2019. Till the date of filing of the application, only one witness has been examined. So it is established that in Session Trial No.445 of 2017, the entire prosecution evidence was recorded before framing of charge

in S.T. No.460 of 2018. As the accused against whom charge-sheet has been submitted in Session Trial No.460 of 2018 were not present during the course of trial of S.T. No.445 of 2017 i.e. recording of prosecution evidence, evidence of this case cannot be read against them. The Session Trial No.460 of 2018 is at the initial stage of recording of evidence, while S.T. No.445 of 2017 is at the fag end. The two session trials cannot be clubbed/ consolidated at this stage. As it will severely prejudice the prosecution in Session Trial No.445 of 2017. The evidence in Session Trial No.460 of 2018 is to be recorded separately, so there is no sufficient ground to club/ consolidate these two session trials. The learned trial Court has rightly rejected the application in this regard. There is no illegality in the impugned order.

5. The revision is devoid of merits and is hereby **dismissed**.

Order Date :- 29.11.2023

Ruhi H.