

Court No. - 12

Case :- CRIMINAL REVISION No. - 182 of 2018

Revisionist :- Aaddya Shanker And 4 Others

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Kailash Nath Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Rajeev Singh,J.

1. Counter affidavit filed by learned A.G.A. is taken on record.
2. Heard learned counsel for the revisionists as well as learned A.G.A. for the State and perused the record.
3. The present revision has been filed for quashing the impugned order dated 01.02.2018 passed by learned Additional Session Judge/F.T.C., Court No.2, Gonda in S.T. No.95 of 2014 arising out of Case Crime No.351 of 2013 U/s 147, 148, 149, 304, 504, 323, 324, 325, 506 I.P.C., Police Station- Kotwali Mankapur, District- Gonda.
4. Learned counsel for the revisionists submits that F.I.R. of the case in question was lodged against ten persons. He further submits that during the course of investigation, it was found that revisionists were not present at the place of incident as they were doing their job in Delhi. He further submits that charge-sheet was filed against five persons, namely, Sharvan Kumar, Dadhich Kumar, Bhavani Sahay, Radhey Shyam & Shitla Prasad and during the course of trial, PW-1 and PW-2 were examined, in their statements, they made allegations against revisionists by stating their presence at the time of incident. It is further submitted that one application U/s 319 Cr.P.C. was moved by private respondent for summoning revisionists, the same was rejected vide order dated 15.11.2014; the said order was challenged before this Court in Crl. Revision No.603 of 2015 by private respondent. It is further submitted that in the meantime, trial of the case in question was concluded and all the aforesaid five persons were convicted, thereafter, the aforesaid revision was allowed by this Court vide order dated 21.04.2017 by setting aside the order dated 15.11.2014 with the direction to pass fresh order. In this regard, learned trial court allowed the application U/s 319 Cr.P.C. ignoring the statement of Investigating Officer, in which, he categorically stated that name of revisionists were dropped on the basis of lack of evidence as it was found that they were on duty in Delhi. It is,

thus, submitted that indulgence of this Court is required.

5. Learned A.G.A. opposes the prayer of revisionists and submits that learned trial court has rightly summoned the revisionists on the basis of statements of witnesses but he does not dispute this fact that revisionists were named in F.I.R. but during the course of investigation, evidence was not found against them, hence, their names were deleted and charge-sheet was filed against aforementioned five persons.

6. Considering the submissions of learned counsel for revisionists, learned A.G.A. and going through the contents of revision as well as other relevant documents; it is undisputed fact that revisionists were named in the F.I.R. along with five others but their names were dropped in charge-sheet as no evidence was found against them and they were present in Delhi at the time of incident. It is also undisputed fact that Investigating Officer was earlier examined before trial court and it was stated by him that revisionists were not present at the time of incident but all these facts were not considered by learned trial court at the time of passing the impugned order.

7. In view of the above, the present application U/s 482 Cr.P.C. is **allowed** and the impugned order dated 01.02.2018 passed by learned Additional Session Judge/F.T.C., Court No.2, Gonda is hereby **set aside**.

Order Date :- 26.10.2023

Arpan