

Neutral Citation No. - 2023:AHC-LKO:85839

Reserved

Court No. - 12

Case :- CRIMINAL REVISION No. - 810 of 2023

Revisionist :- Saurabh Singh And 4 Others

Opposite Party :- State Of U.P. Thru. Secy. Home, Lko And 4 Others

Counsel for Revisionist :- Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.,Ankit Tiwari, Shailender Singh

Hon'ble Rajeev Singh,J.

1. Heard Sri Rajesh Kumar Singh, learned counsel for the applicants, learned A.G.A. & Ms. Vijeta Singh, Advocate holding brief of Sri Shailendra Singh, connected through virtual hearing but due to poor connectivity, she submitted her arguments from her mobile no.9455686999 and mobile no.8004996690 of Mr. Santosh Gupta, Bench Secretary/Reader of this Court.

2. The present criminal revision is filed with the prayer for setting aside the order dated 4.7.2023 passed by Civil Judge, (J.D.)/ Ist F.T.C. Pratapgarh and charge sheet dated 13.1.2023 in Case Crime No.173/2022 under Sections 323, 504, 506, 406, 498-A of I.P.C. & Section 3/4 D.P. Act, Police Station Mahila Thana, District Pratapgarh.

3. Learned counsel for the revisionist has submitted that marriage of the revisionist no.1 was solemnized with the private respondent no.5 on 28.11.2021 without taking any dowry, as the nature of the respondent no.5 was aggressive, she started

victimizing the applicant no.1 by way of demanding the cash and also started giving threat that in case applicant no.1 and other family members failed to fulfill her desire, they will be implicated in a criminal case. On 4.9.2022, brother and father of the respondent no.5 came to the house of the applicants and she went with them, on 10.9.2022, applicant no.1 met with an accident, but neither respondent no.5 nor her family member came to see him. He further submitted that as per the prosecution case, application dated 22.9.2022 was given and on 4.10.2022, on the basis of wrongly alleged facts, F.I.R. of the case in question was lodged by opposite party no.5 under Sections 323, 504, 506, 406, 498-A of I.P.C. & Section 3/4 D.P. Act with the averment that about Rs.18,00,000/- was invested by her father in her marriage and after sometime, applicants started demanding Rs.9,00,000/- cash, failing which, she was threatened to kill, on 21.9.2022 at about 9:00 p.m., she was beaten brutally by the applicants and ousted her from home, thereafter, she came to the Teunga colony, Kotwali Nagar, Pratapgarh and narrated the incident to her parents. He next submitted that when this fact came into notice of the applicants, they made request to the Investigating Officer that victim was using mobile no.8953130906 and her call details should be examined as she left the house of the applicant on 4.9.2022 alongwith her father and brother and reason is best

known to her that why she was making wrong avernments. He further submitted that after leaving the house of the applicants on 4.9.2022, respondent no.5 started torturing the applicant by making call from her aforesaid mobile number on 9.8.2022 at 2:15 A.M. (55 m 24s), 9.8.2022 at 3:10 A.M. (30 m 21s), 9.10.2022 at 1:20 A.M., 9.10.2022 at 1:21 A.M. (17s), 9.10.2022 at 1:35 A.M. (6 m 28s), 9.10.2022 at 1:42 A.M. (27 m 39s), 9.10.2022 at 2:13 A.M., 9.10.2022 at 2:14 A.M. (51 m 35s) and he met with an accident on 10.9.2022 and received fractures and was on leave for about two months but neither she nor her family members came to see him.

4. Learned counsel for the applicants has given emphasis and submitted that in case prosecution case is true that she was ousted on 21.9.2022 at 9:00 P.M. by the applicants from house at Allahabad, then she went to her parents house at Pratapgarh but neither she explained in her statement that show she went to Pratapgarh nor her location was collected by the Investigating Officer from service provider of her mobile phone.

5. Learned counsel for the applicants has submitted that as per the prosecution case, respondent no.5 was ousted without any ornaments but she uploaded her photo on facebook, later on, in which, she is with ornaments given by the applicants, and charge sheet was filed in the most mechanical manner without

investigating the call detail report and location of private respondent no.5, then application was given to the Additional Director General of Police, Prayagraj on 16.1.2023 for examining the call detail report of respondent no.5 and order was passed on the application dated 16.1.2023 by the Additional Director General of Police, Prayagraj directing the Superintendent of Police, Pratapgarh to investigate the matter and submit a report within 15 days with regard to the call detail report and location of the respondent no.5 but no investigation was conducted and charge sheet was filed and cognizance was taken by the court below, thereafter, application for further investigation was moved before the court below in pursuance of decision of Hon'ble Apex Court in the case of **Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujarat & Anr.** reported in **2019 LawSuit(SC) 1753** but the application was rejected by the court below in the most mechanical manner.

6. Learned counsel for the revisionist has submitted that respondent no.5 was directed to appear before this Court on 10.8.2023 and she admitted that she was having mobile no.8953130906 from the date of her marriage, thereafter, a direction was issued to the Superintendent of Police, Pratapgarh for production of the call detail report of the aforesaid mobile number from 4.9.2022 till 10.8.2023 and by way of counter affidavit dated 5.9.2023 filed by Mr. Prabhat

Kumar, Circle Officer Traffic, Pratapgarh placed the call detail report of the aforesaid mobile number and informed that call detail report of the mobile number clearly reveals that respondent no.5 was in her parents house since 5.9.2022. In such circumstances, when the location of the mobile phone, which was admittedly carried by respondent no.5 speaks that she was at her parents house after 4.9.2022, then allegation made in the F.I.R. that she was ousted from home on 21.9.2022, are wrong, therefore, the impugned charge sheet as well as order passed by the court below is liable to be set aside.

7. Ms. Vijeta Singh, learned counsel for the private respondent opposed the prayer of the revisionist through online hearing and submitted that all these defence can be considered at appropriate stage before the trial court and also submitted that statements were recorded under Section 161 Cr.P.C. and all the witnesses has categorically supported the prosecution version as the respondent no.5 was being victimized by the applicants for demand of dowry but she does not dispute this fact that victim was having mobile no.8953130906. She also submitted that the call detail reports placed by the Investigating Officer alongwith counter affidavit are not admissible at this stage and relied on the decision of **Anvar P.V. Vs. P.K. Basheer** reported in **A.I.R. 2015 SC 180** and submitted that call detail report shall not be admitted as evidence unless the requirements under

Section 65-B of the Indian Evidence Act are satisfied. She further relied on the decision of Delhi High Court in the case of **Azad @ Gourav Vs. State of G.N.C.T. of Delhi & Anr.** passed in **Criminal Appeal No.593/2022**. She also relied on the decision of this Court in the case of **Shyama Charan Dubey Vs. State of U.P.** reported in **1990 Cri. L.J. 456** and **Nupur Talwar Vs. Central Bureau of Investigation** reported in **A.I.R. 2012 SC 1921** and submitted that neither the informant nor the accused can claim further investigation as a matter of right after filing of the charge sheet.

8. Learned A.G.A. opposed the prayer of the applicant and submitted that there is no flaw in the investigation as all these arguments can be placed before the trial court at the time of defence, and further investigation is not needed, therefore, there is no illegality in the order but he does not dispute this fact on the basis of counter affidavit filed by Circle Officer enclosed with the C.D.R. of mobile phone no.895313096 of respondent no.5 that after 5.9.2022 onwards location of her mobile number is found at her parents house.

9. Considering the submissions of learned counsel for the parties, going through the record of the revision as well as impugned order, it is evident from the counter affidavit filed by the Circle Officer enclosed with the call detail report of mobile

no.8953130906 of respondent no.5/informant, location of her mobile number, which was being carried by her is found that she was at her parents house after 5.9.2023 and there was an order passed by Additional Director General of Police, Prayagraj on 16.1.2023 for further investigation considering this fact that whether on 21.9.2022, private respondent was present at the house of the applicant or not including her mobile location etc but all these facts were not investigated by the Investigating Officer, even Mr. Prabhat Kumar, Circle Officer Traffic, Pratapgarh conceded this fact on the basis of call detail report enclosed with counter affidavit that location of the mobile of the victim was at her parents house since 5.9.2022, as the judgment relied by learned counsel for the private respondent are not applicable in the present case at this stage, as the Hon'ble Apex Court in the case of **Vinubhai Haribhai Malaviya (supra)** ordered that further investigation can be passed by the Magistrate at any stage, in case, the relevant evidences were not considered by the Investigating Officer, as per Para 107 of the U.P. Police Regulation Act, it is obligatory on the part of the Investigating Officer to consider and investigate all the evidences provided by the accused, in such circumstances, the present criminal revision is **allowed** and the order dated 4.7.2023 passed by Civil Judge, (J.D.)/ Ist F.T.C. Pratapgarh and charge sheet dated 13.1.2023 in Case Crime No.173/2022

under Sections 323, 504, 506, 406, 498-A of I.P.C. & Section 3/4 D.P. Act, Police Station Mahila Thana, District Pratapgarh is set aside.

10. The Chief Judicial Magistrate, Pratapgarh is directed to return the charge sheet alongwith the complete police report dated 13.1.2023 to Superintendent of Police, Pratapgarh and Superintendent of Police, Pratapgarh is directed to depute some responsible officer for re-investigation considering the call detail report of the respondent no.5 and her location on 4.9.2022 onwards, which is filed before this Court and also submit a report before the court concerned as soon as possible.

Order Date :- 22nd December, 2023.

Gaurav/-