

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9603 of 2023

Applicant :- Shalini

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil
Sectt. Lko And Another

Counsel for Applicant :- Abhay Raj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Since the pure legal question is involved in this matter, hence, notices to opposite party no. 2 are hereby dispensed with.

Heard Sri Abhay Raj Singh, learned counsel for the applicant, Sri Sushil Kumar Pandey, learned AGA for the State and perused the record.

By means of the instant application the applicant has assailed the order dated 21.11.2022 passed in criminal case no. 1317 of 2022 as well as the revisional order dated 03.08.2023 passed in criminal revision no. 207 of 2022.

The contention of learned counsel for the applicant is that on 24.03.2020, the petitioner lodged an FIR as first information report no. 46 of 2020 under section 147, 148, 149, 452, 427 and 307 of IPC, showing the date of incident as 19.03.2022 and another FIR was also lodged against the family members of the applicant on 19.03.2022. He added that the date and place of occurrence of the incident mentioned in the first information reports lodged by both the parties are same and as such these are the cross cases. He also added that when this issue was agitated before the trial court, the trial court rejected the same vide order dated 21.11.2022, by recording perverse findings that place of occurrence and the time of occurrence are not same. He

added that the so far as the FIR lodged by the present applicant as well as respondent no. 2 is concerned, those clearly indicates, the same date of occurrence and same place of occurrence, which is evident from the first information reports itself. He next added that in this view of matter, the finding recorded in the order dated 21.11.2022 are erroneous.

Further contention of learned counsel for the applicant is that once the aforesaid order was challenged before the learned revisional court, revisional court while reiterating the same analogy and factum, dismissed the revision filed by the applicant on 03.08.2023.

In support of his submission, he has placed reliance on the judgment reported in **(2001) 2 SCC page 688 Sudhir and others versus State of M.P.** and has referred paragraph 8 and 12 of the above-said judgment.

Paragraphs 8 and 12 of the aforesaid judgment are quoted herinunder:-

"8. It is a salutary practice, when two criminal cases relate to the same incident, they are tried and disposed of by the same court by pronouncing judgments on the same day. Such two different versions of the same incident resulting in two criminal cases are compendiously called "case and counter- case" by some High Courts and "cross-cases" by some other High Courts. Way back in the nineteen hundred and twenties a Division Bench of the Madras High Court (Waller and Cornish, JJ.) made a suggestion (Goriparthi Krishtamma, In re¹ that "a case and counter-case arising out of the same affair should always, if practicable, be tried by the same court, and each party would represent themselves as having been the innocent victims of the aggression of the other"

12. How to implement the said scheine in a situation where one of the two cases (relating to the same incident) is charge-sheeted or complained of, involves offences or offence exclusively trable by a Court of Session, but none of the offences involved in the other case is exclusively triable by the Sessions Court. The Magistrate before whom the former case reaches has no escape from committing the case to the Sessions Court as provided in Section 209 of the Code. Once the said case is committed to the Sessions Court, thereafter it is governed by the provisions subsumed in Chapter

XVIII of the Code. Though, the next case cannot be committed in accordance with Section 209 of the Code, the Magistrate has, nevertheless, power to commit the case to the Court of Session, albeit none of the offences involved therein is exclusively triable by the Sessions Court. Section 323 is incorporated in the Code to meet similar cases also. That section reads thus:"

Referring the aforesaid judgment, he submits that the it has been held by the Hon'ble Apex Court that 'if two criminal cases relate to the same incident, they ought to try and disposed of by the same court' and the provision of section 323 of Cr.P.C. has also been considered.

Concluding his arguments, he submits that it is apparent from the first information reports that the date and place of occurrence are same and further, the law is settled with this regard also that once the place and date of occurrence are same, matter shall be tried together. Therefore, submission is that the orders dated 21.11.2022 and 03.08.2022 may be set aside.

Learned counsel for the State has opposed the contentions aforesaid and submits that there is no merit in the arguments of learned counsel for the applicant as the learned trial court as well as the learned revisional court has thoroughly considered the issue with respect to hearing the matter by clubbing it together and it was found that the date and place are not the same and those are not the cross cases and therefore, the prayer of the applicant has rightly been rejected by the learned trial court as well as by the revisional court.

Having heard learned counsels for the parties and after perusal of material placed on record, it transpires that two first information reports were lodged, one by the present applicant on 24.03.2020, showing the date of occurrence on 19.03.2020 and another by the respondent, on 19.03.2020. Thereafter, the matter proceeded and this issue was raised before the trial court

that since the date and place of occurrence are similar and therefore, the matter may be tried together and by way of the order dated 21.11.2022 and 03.08.2023, the aforesaid prayer was rejected.

When this Court examines the date and place of occurrence, it emerges from the first information report that though the date of lodging of the first information reports are different, but the date of occurrence which are mentioned in the FIR's are same. Further the place of occurrence, prima facie, seems to be similar as narrated in the FIR.

This Court has also noticed the fact that time and again, the Apex court has dealt with this issue and in case of Sudhir and others versus State of M.P. (Supra), the Apex Court has held that, it has been a practice that when two criminal cases relates to the same incident, they are tried and disposed off by the same court.

In view of the aforesaid submissions and discussions, the orders dated 21.11.2022 passed by the trial court and 03.08.2023 passed by the revisional court are hereby set aside.

Matter is remitted back to the trial court concerned to pass a fresh order, considering the observations made hereinabove and the law settled by the Apex Court within a further period of 45 days from the date of this order.

With the aforesaid observations, the instant application is hereby **disposed of**.

Order Date :- 12.10.2023
Mayank