

Court No. - 29

Case :- CRIMINAL REVISION DEFECTIVE No. - 411 of 2023

Revisionist :- Sirtaj Ali

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Civil Sectt. Lko And 3 Others

Counsel for Revisionist :- Parashu Ram Kanaujia, Rajeev Kumar

Counsel for Opposite Party :- G.A., Amit Jaiswal Ojus Law

Hon'ble Mrs. Renu Agarwal, J.

1. Heard learned counsel for the revisionist and learned counsel for opposite party No. 2.
2. Instant Criminal Revision under Section 397/401 Cr.P.C. along with the Criminal Misc. Application No. 2 of 2023 for condonation of delay has been preferred against the judgment and order dated 20.01.2023 passed by the Additional Chief Judicial Magistrate-III, Sultanpur in case crime No. 567 of 2020, registered under Section 419, 420, 392, 504, 506 and 427 I.P.C., Police Station-Gauriganj, District-Amethi.
3. It is submitted by learned counsel for the revisionist that the revisionist could not file the instant revision within time as he was sick during the said period and the application for condonation of delay be allowed.
4. Mr. Amrish Singh Yadav, advocate holding brief of Mr. Amit Jaiswal, learned counsel for the opposite party has opposed the application for condonation of delay.
5. It transpires from the medical slips annexed with the application that revisionist was ill during the period of 08.05.2023 till 23.05.2023 and there is no explanation as to why the revisionist did not file the revision immediately after the impugned judgment and order dated 20.01.2023, hence, grounds for condonation of delay are not convincing, hence, application for condonation of delay is hereby **rejected**.

6. It is submitted by learned counsel for the opposite party that revision is maintainable in the court of learned Sessions Judge at the first instance and the revisionist has filed Revision in this Court. In this context, learned counsel for the revisionist has submitted that jurisdiction of High Court as well as Sessions Court is concurrent and he may file revision in any of the Court of his choice, hence this argument goes in the favour of the revisionist and it is found that revisionist has relinquished his right to move revision in the Court of Sessions and he has directly moved revision in the concurrent Court i.e. High Court.

7. Learned counsel for the revisionist, in his contention, has submitted that the revisionist has moved an application under Section 156(3) Cr.P.C. against the Citi Bank now merged with Axis Bank under Section 419, 420, 392, 504, 506, 427 I.P.C. After investigation, I.O. submitted final report under Section 173 Cr.P.C. It is next submitted that the truck of the deponent had gone to Fatehpur to load grit, after loading the grit, the truck was returning to Sultanpur on 20.04.2019, where it was to be unloaded. On 20.04.2019, the truck driver had parked the truck in front of a restaurant (Dhaba) situated in Fatehpur District to have meal, some persons along with police personnel snatched the truck of the revisionist saying that owner has defaulted to repay its installments. It is further submitted that the revisionist moved a protest petition which was also rejected vide order dated 20.01.2023. It is next contended that Bank forcefully had taken away the truck registered in the name of revisionist, however, only three installments were left to be paid and all the remaining installments were paid. It is further contended that opposite parties have no right to snatch forcefully the truck and investigating officer did not make a thorough investigation and no legal procedure was adopted during the investigation. It is also contended that the learned trial court has illegally and arbitrarily rejected the protest petition of the revisionist and no notice was served upon the revisionist for repayment of the defaulted installments or for auction of the said truck, hence the impugned order is liable to be set-aside.

8. Learned counsel for the opposite party has submitted that notice has been served upon the revisionist and notice of auction was also served upon the

revisionist and it is admitted fact by the revisionist that he has defaulted in payment of three installments. As per registration of vehicle, the truck was hypothecated to the Bank, hence the opposite party has rightly auctioned the said truck in the light of the hypothecation agreement. It is also submitted that since the said truck has been auctioned out following the legal procedure, the revision has become infructuous.

9. Considering the fact that revisionist made a default in payment of three installments and auction notice was given to him, he did not move any objection regarding the auction notice nor paid the defaulted installments due to him and the truck was hypothecated to the Bank who has rightly confiscated the impugned truck in consonance with the condition of hypothecation deed. It is clearly evident from the impugned order dated 20.01.2023 that court concerned had considered the above mentioned facts and mentioned in its order that "it is apparent that the Truck UP 36T6767 was attached/acquired after due process of giving notice to borrower Shirtaj Ali and Guarantor, owing to failure to pay the standing EMIs even in his statement of SCD page 4, the informant/borrower Shirtaj Ali has stated to receiving notices from Bank and had ample knowledge about all proceedings taken by Bank towards securing loan amount and attaching/ acquiring said Truck, further, there is no glaring lacunae and loopholes in the investigation done."

10. The learned trial court has discussed the protest petition deeply in the light of investigation and there is no lacunae, irregularity, illegality or perversity in the impugned order passed by the court below, hence the present revision is liable to be dismissed at this stage.

11. In view of the above, Revision is hereby **dismissed**.

(Renu Agarwal,J.)

Order Date :- 8.11.2023

Karan