

Court No. - 12

Case :- CRIMINAL REVISION DEFECTIVE No. - 420 of 2023

Revisionist :- Rajat Verma

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

Counsel for Revisionist :- Arvind Kumar, Shivendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

(C.M.A No.2/2023)

1. Heard on application for condonation of delay.
2. Cause shown in the affidavit filed in support of the application for condonation of delay is sufficient.
3. Delay in filing the criminal revision is hereby condoned and application for condonation of delay is **allowed**.

(Order on Criminal Revision)

1. Heard learned counsel for the revisionist and learned A.G.A. for the State.
2. The present criminal revision is filed against the judgment and order dated 28.3.2023 under Section 319 Cr.P.C. passed by learned Addl. Session Judge/Spl Judge (POCSO) Act, Court No.44, Barabanki in S.C. No.1501/2022, Case Crime No.415/2022 under Section 363, 366, 376 I.P.C. and Section 3/4 POCSO Act, Police Station Safdarganj, District Barabanki.
3. Learned counsel for the revisionist has submitted that daughter of the complainant left the house on her own and went with Vikas Kumar S/o Ramkumar, r/o Village Malauli, P.S. Masauli, District Barabanki but on the basis of incorrect facts, F.I.R. was lodged. He further submitted that during the course of investigation, victim was recovered on 13.9.2023, after four days from the lodging of the F.I.R. and in statement recorded under Sections 161 and 164 Cr.P.C., she categorically stated that she was aged about 18 years and on 8.9.2022, she was beaten by her

father, as a result, she left her house on her own at 10:00 P.M. and by walking, she reached near P.S. Masauli and made a call to the Vikas Kumar but he was not came to her then she told him that she will commit suicide, thereafter, he came to her and both went to his house and thereafter, in the morning at 8:00 A.M. they went to a temple and entered into marriage and started residing in the house of Vikas Kumar and living as a couple and made physical relations and this statement was again reiterated in the statement recorded under Section 164 Cr.P.C., which was recorded by Civil Judge (J.D.), Ramsanehighat, Barabanki in presence of Sub Inspector Sanjeev Kumar and Lady Constable Arpita Sahu. He further submitted that on the basis of evidences collected by the Investigating Officer, name of the applicant was dropped and charge sheet was submitted against Vikas S/o Ram Kumar Nag and after taking cognizance, trial was proceeded and statement of victim was recorded before the trial court and now she changed her version and made allegation against the applicant.

4. Learned counsel for the revisionist has submitted that this is a glaring development of a criminal case which is contradictory to the evidence collected by the Investigating Officer as well as the statement recorded before the Magistrate, thereafter, application under Section 319 Cr.P.C. was submitted and summoning order was passed by the court below without considering the evidences collected by the Investigating Officer during the course of investigation. He also relied on the decision of **Brijendra Singh & Ors. Vs. State of Rajasthan** reported in **2017 (4) JT 530** and submitted that it was obligatory on the part of the court below to consider the evidences collected by the Investigating Officer during the course of investigation as well as the deposition of the victim but learned court below ignored the statement of the victim recorded before the Magistrate under Section 164 Cr.P.C. as well as other evidences collected by the Investigating Officer and issued summoning order in the most mechanical manner, therefore, indulgence of this Court is necessary.

5. Learned A.G.A. opposed the prayer of the applicant but he does not dispute this fact that applicant was named in the F.I.R., which was lodged by father of the victim merely on the basis of presumption and thereafter, Investigating Officer conducted the investigation and statement of victim was recorded under Section 161 as well as 164 Cr.P.C., in which, she stated that she went on her own with Vikas Kumar, as she was minor, therefore, charge sheet was submitted by the Investigating Officer against Vikas Kumar and name of the applicant was dropped. He further submitted that during the course of trial victim has made allegation against the applicant, therefore, summoning order was passed by the court below and he has no objection in case the matter is remanded to the court below. He also does not dispute on the verdict of the trial court in the case of Brijendra Singh (supra).

6. Considering the submissions of learned counsel for the parties, going through the record, as the F.I.R. of the case in question was lodged by father of the victim merely on the basis of presumption against the applicant, thereafter, victim was recovered and her statement was recorded under Section 161 and 164 Cr.P.C., in which, she categorically stated that she was beaten by her father, and due to annoyance, she left her house on 8.9.2022 in the night at 10:00 p.m. and made a call to Ram Kumar, when he was not willing to come to her, then a threat for committing suicide was given, thereafter, he came to her and later on, both went to the house of Vikas Kumar and stayed there, and on the next date, then went to a temple, entered into marriage and started living as husband and wife, she again reiterated version of her statement before the Magistrate recorded under Section 164 Cr.P.C. and thereafter, charge sheet was submitted by the Investigating Officer as a victim was minor, charge was framed against Vikas but during the course of recording the evidence, victim changed her version and made allegation against applicant also but the learned court below failed to consider the evidences collected by the Investigating Officer as well as her deposition and allowed the application under Section 319 Cr.P.C., as the Hon'ble Supreme Court

in the case of Brijendra Singh (supra), it was observed that evidence cannot be confined upto the deposition of the witness at the time of considering the power under Section 319 Cr.P.C., which was obligatory on the part of the court below to examine all the evidences for its satisfaction, but in the present case, evidences collected by the Investigating Officer was not considered, as the constitutional bench of Apex Court in the case of **Hardeep Singh Vs. State of Punjab & Ors.** reported in **2014 (3) SCC 92** has categorically held that the decree of satisfaction must be much higher, therefore, this court is of the view that order dated 28.3.2023 passed by the learned court below is liable to be set aside.

7. In view of the above, the present application under Section 482 Cr.P.C. is **allowed** and the order dated 28.3.2023 passed by the court below is hereby set aside with a direction to the court below to pass a fresh order, in accordance with the law.

Order Date :- 18.11.2023

Gaurav/-