Court No. - 12

Case :- CRIMINAL REVISION No. - 1302 of 2023
Revisionist :- Sri Nath Tiwari @ Munnu
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another
Counsel for Revisionist :- Naveen Kumar Pandey,Kailash Nath Mishra
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Vakalatnama filed by Shri Arun Kumar Mishra and Ashish Raman Mishra, Advocates on behalf of opposite party no.2 is taken on record.

2. Heard learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

3. Present revision has been moved by the revisionist for quashing the impugned order dated 20.10.2023 passed by Additional Sessions Judge, Court No.4/Special Judge, E.C. Act, Gonda, in S.T. No.285 of 2014 arising out of case crime no.231/2014, under Section 147, 148, 149, 504, 506, 302 I.P.C., P.S. Kotwali Dehat, District- Gonda.

4. Learned counsel for the revisionist submitted that the revisionist was named in the F.I.R. along with the other accused persons and the knife was assigned to him. He further submitted that during the course of investigation, statement of villagers, namely, Sadhu Verma, Buddhu and Ghanshyam Mishra were recorded along with other eye witnesses and they categorically stated that at the time of alleged incident, revisionist was not present and charge sheet was filed against rest of the accused persons, therefore, name of revisionist was dropped by the Investigating Officer and cognizance was taken by the trial court and case was committed to the Court of sessions. He further submitted that application was filed under Section 319 Cr.P.C. which was not pressed and after recording the statement of P.W.2 and P.W.3, another application was filed as the trial court without considering the contents of the earlier application of P.W.1 as well as statement of witnesses, passed the summoning order under Section 319 Cr.P.C. which is utter violation of the principles laid down by the Hon'ble Apex Court in the case of ***Hardeep Singh Vs. State of Punjab*** reported in ***(2009) 16 SCC 785***, therefore, kind indulgence of this Court is necessary.

5. Learned A.G.A. as well as learned counsel for the private respondent opposed the prayer of revisionist and submitted that it is a case of murder and the name of revisionist was stated by the eye witnesses and his name was dropped by the Investigating Officer merely on the basis of other villagers those were not eye witnesses. They further submitted that the first application was submitted at the time of recording the statement of P.W.1 only as he categorically supported the prosecution version in his deposition. They further submitted that merely on the basis of injury found on the body of deceased, accused persons cannot be exonerated as the revisionist has been summoned under Section 147, 148, 149, 504, 506, 302 I.P.C. and rest of the witnesses have also supported the prosecution story, therefore, revision is liable to be dismissed.

6. Considering the submissions of learned counsel for the parties, going through the contents of revision, as well as other relevant documents, as it is evident from the record that all the witnesses have stated that Shiv Nath, Shri Nath were causing injury with the knife and attacking with the Hasia, as the revisionist has been summoned under sections 147, 148, 149, 504, 506, 302 I.P.C. and all the witnesses have stated that he was present at the time of incident and also actively participated in the alleged crime and merely on the basis of withdrawal of one application under Section 319 Cr.P.C., it cannot be said that second application cannot be moved, therefore, revision is misconceived and liable to be dismissed.

7. Accordingly, the revision is hereby **dismissed.**

8. However, it is open to the revisionist to apply for bail, in case, any bail application is moved then the same shall be considered and decided in accordance with law.

Order Date :- 29.11.2023
V. Sinha

Digitally signed by :-
VAISHALI SINHA
High Court of Judicature at Allahabad,
Lucknow Bench