

Court No. - 86

Case :- CRIMINAL REVISION No. - 1607 of 2024

Revisionist :- Nafees Ahmad

Opposite Party :- State of U.P.

Counsel for Revisionist :- Ajay Kumar Tiwari, Sangam Lal Kesharwani

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the revisionist, learned AGA for the State and perused the material placed on record.
2. Instant criminal revision has been preferred against the judgement and order dated 8.2.2024, passed by learned Additional Sessions Judge/Special Judge, POCSO, Court No.13, Saharanpur, in Criminal Misc. Case No.542 of 2023, under Sections 377, 302, 201, 34 IPC and Section 3/4 of POCSO Act, Police Station Devband, District Saharanpur. By the impugned order learned trial court has dismissed the complaint filed by the revisionist at the stage of cognizance on the ground of non maintainability.
3. The factual matrix of the case in brief are that the informant/revisionist lodged an FIR on 31.1.2023, at 8:30 PM on the basis of written report wherein it is stated that on 30.1.2023, at 7:30 PM, his minor son aged around 13 years was returning home after taking the lesson from Madarsa but he did not reach the home till night. On 31.1.2023 at around 7:00 AM, he received an information that the dead body of his missing son was lying in the field of Naseem. He reached the spot and found the corpus of his son lying in the field. His son was murdered by some unknown person by slitting his neck. The police carried out inquest on the

body of the deceased and sent the dead body for post mortem examination. In the post mortem report, four antemortem injuries in the nature of lacerated wound were detected on forehead, right upper, eyelid, front of neck and scrotum. The Doctor opined that the cause of death was due to shock and hemorrhage as a result of antemortem injuries. Viscera was preserved for chemical analysis. The police investigated the case and during investigation name of one Md. Aman, son of Jubair Alam, aged around 12 years surfaced, who appeared juvenile in conflict of law. This fact also surfaced that the juvenile had killed the victim. The clothes worn by the accused were also recovered in the presence of his mother from a sandook (box) kept in a room in his house. The police submitted chargesheet against said juvenile after investigation.

4. Learned counsel for the revisionist submitted that in fact the informant/revisionist had disclosed the name of Mohd. Aman, son of Jubir, Osama son of Akram, Jubir Alam son of Mahmood and Anjum wife of Jubair Alam while lodging of FIR at police station but SHO had not registered the FIR as per the information given by the revisionist and registered the FIR against unknown person. He also got signature of the informant on some blank papers on pretext of undertaking necessary action. The police has challaned only Md. Aman, son of Jubir Alam whereas involvement of four persons in the offence was not found. Inasmuch as he had also filed an application before the S.S.P., Saharanpur in this regard wherein he has prayed for transfer of investigation to some other agency or police station located in other district. No action was taken by S.S.P. on his application. Thereafter, he was left with no other option but to file a complaint case against Osama, Jubair and Anjum, who were also involved with the accused Aman Gauri in the murder of his son. The criminal complaint was filed under

Sections 302, 201, 377 IPC and Section 3/4 of POCSO Act, at Police Station Devband, District Saharanpur in the Court of Special Judge, POCSO Act on 13.7.2023, however, learned trial court without embarking on procedure prescribed under Chapter XV of Code of Criminal Procedure for a complaint case, dismissed the complaint at the stage of cognizance on erroneous impression that as an FIR was already lodged in the matter and the investigation has resulted in chargesheet against one accused namely, Md. Aman Gauri, son of Jubir, a complaint case against other persons filed by the informant subsequently was not maintainable. Learned counsel for the revisionist further submitted that learned trial court has mis-interpreted the judgement of Hon'ble Apex Court in ***Krishnalal Chawla vs. State of UP, 2021 SCC ONLINE 191*** and paragraph no.10 of said judgement has been cited in support of the conclusion of learned court below. An observation has been made by learned trial court in paragraph no.3 that there is still an option before the complainant to move an application under Section 319 Cr.P.C. after recording of some evidence during trial of chargesheeted accused for summoning the accused persons who are named in the complaint. He lastly submitted that the learned trial court has cited a judgement of Hon'ble Supreme Court in ***Pal alias Palla vs. State of UP, (2010) 10 Supreme Court Cases 123*** but no discussion of said judgement has been made in impugned order.

5. Per contra, learned AGA submitted that there is no illegality, irregularity or perversity in the impugned order passed by the learned trial court by dismissing the complaint at the stage of cognizance. The learned court below has rightly observed in paragraph No.3 of the impugned order that even after declining taking of cognizance on complaint against named accused persons,

the complainant will have an opportunity to move an application under Section 319 Cr.p.C. during trial of chargesheeted accused with prayer to summon the persons named in the complaint as accused.

6. Hon'ble Supreme Court in ***Pal alias Palla vs. State of UP (supra)***, observed as under:-

"26. [Section 210](#) Cr.P.C. provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of [Section 210](#) provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation.

27. Sub-Section (2) provides that if a report is made by the Investigating Officer under [Section 173](#) and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code.

28. Although, it will appear from the above that under [Section 210](#) Cr.P.C. the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises.

29. In our view, this is a case where the decision in [Harjinder Singh's](#) case (*supra*) would be more apposite. In the said case, the question of [Article 20\(2\)](#) of the Constitution, as well as [Section 300](#) Cr.P.C., relating to double jeopardy was considered. A similar situation has arisen in this case where the version in the complaint case and the police report are totally different,

though, arising out of the same incident. In our view, this is a case where the two trials should be held simultaneously but not as a single trial.

30. The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in Harjinder Singh's case (supra) clubbing and consolidating the two cases, one on a police challan and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases could be disposed of simultaneously.

31. Although, the High Court has relied on the provisions of [Section 210](#) of the Code in directing that the two cases be clubbed together, in our view, the fact situation does not really attract the provisions contemplated in the said section. On the other hand, as indicated hereinabove, the trial court, in the unusual facts of the case, is required to hear the two cases together, though separately, and take evidence separately, except in respect of all witnesses who would not be affected either by the provisions of Article 20(2) of the Constitution or Section 300 Cr.P.C."

7. On perusal of record, it appears that the informant lodged an FIR at police station concerned against unknown persons by filing a written report at police station concerned on 31.1.2023 that his minor son Mohd Jakwan, aged 13 years had gone to Madarsa for studies on 30.1.2023; when he was returning home from the school, he got missing and he did not come back to home till late night and on next day i.e. 31.1.2023, at around 7:00 AM, he was informed that his dead body was lying in an agricultural field. He was killed by slitting his neck by some unknown person. During investigation, this fact emerged that one Mohd. Aman Gauri, son of Jubair Alam, aged around 12 years was the perpetrator of the crime. As he was minor at the time of arrest, he was referred to Juvenile Justice Board for inquiry and trial. According to the prosecution version, a sharp edged weapon *Darati* and a piece of brick was used in the offence, were recovered at the instance of juvenile accused, who was lodged in Government Observation Home on 1.2.2023. According to the revisionist/informant, he had given information to the Investigating Officer that in this murder

case, Osama, Jubair and his wife Nazma were also involved alongwith accused Aman Gauri during the course of investigation but Investigating Officer did not proceed against them as he was hand in glove with these persons and he had also filed applications before S.S.P., Saharanpur for including them in investigation as accused but no action was taken. Thereafter, he had filed a criminal complaint before the Additional Sessions Judge/Special Judge, POCSO, Court No.13, Saharanpur, which is registered as Complaint Case No.452 of 2023, wherein he has stated that he runs a grocery shop in the village. The opposite party Osama had enticed his son Jakwan through juvenile Aman Gauri to commit theft in the cash box of the shop and this fact subsequently came into the light and juvenile Aman Gauri and his parents admitted this fact. Osama is a man of bad repute and there are many complaints against him to have committed sexual abuse of many children. Osama called his son Jakwan through Aman Gauri on 30.1.2023 from home and offer him chowmein on the shop of Salim. He brought him in a vacant house in the evening at around 7:30 PM and committed unnatural sex with him and killed him with assistance of Aman Gauri by a brick and sharp edged instrument due to prior enmity and protest raised by the victim and left the dead body in the field of mustard and covered it by the plants of mustard.

8. Learned trial court has dismissed the complaint at the stage of cognizance citing a judgement of Supreme Court in **Krishna Lal Chawla vs. State of UP, 2021 SCC ONLINE 191** with observation that the complainant has not shown the juvenile Aman Gauri in array of the accused persons in the complaint but he has given elaborate description of role played by him in the murder of his son. Therefore, it would not be lawful to proceed against the

opposite parties on the basis of taking cognizance on complaint and in this situation, the only alternative available to the complainant is to take recourse of Section 319 Cr.P.C.

9. Considering the totality of facts and circumstances of the case, I am of the considered opinion that the approach of the learned court below in rejecting the complaint at the stage of cognizance is contrary to law. This is admitted fact that the main accused Aman Gauri, who is chargesheeted by the police after investigation is facing trial at JJB. The Act of 2015, which is applicable in the case prohibits trial of a Juvenile under Section 23 of the Act, which provides that notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child. Thus, this observation of the court below that the complainant has no option but to take recourse of Section 319 Cr.P.C. is without any foundation. Section 319 Cr.P.C. empowers the trial court to summon a person as additional accused, if his complicity is found during inquiry or trial in commission of a crime for which such person could be tried together with the accused, who is already facing trial. Thus, the Juvenile Justice Board cannot summon a major person as additional accused during trial of a juvenile in conflict of law. In that case, there is no other judicial forum where the complainant can file an application under Section 319 Cr.P.C. because such application can only be filed in a criminal case where a person is already facing trial as an accused. Section 210 Cr.P.C. does not forbid cognizance against a person as accused in a complaint case where a police case has already been filed against some other person as accused. The persons named as accused in said complaint in array of accused persons are alleged

to have committed the offence together with the juvenile in conflict of law and he is facing trial on the basis of police report submitted against him in Juvenile Justice Board. The purpose of law is to ensure that no persons whose complicity in offence is found and established get unpunished. The opposite parties in complaint are not chargesheeted alongwith juvenile and on facts of the case, there was no option left before the complainant after his prayer to proceed against the opposite party in police investigation against opposite parties was allegedly not heard but to file a complaint case against them and there was no occasion for the court below to dismiss the complaint at the stage of cognizance after citing the reasons which are not found support under law. The court below has reduced the complainant remedy less by dismissing the same at the stage of cognizance without going into the merits of the case. This is not a case of lodging of a second FIR on the basis of same allegations against same persons which is prohibited under law. Inasmuch as Section 210 of Cr.P.C. provides for clubbing of the case emanated from police report and complaint case in respect of the same offence where the police report does not relate to any accused in the complaint case for if the Magistrate does not take cognizance of the another offence on the police report.

10. In ***Krishnalal Chawla vs. State of UP (supra)***, Hon'ble Supreme Court quashed all other criminal cases between the parties instituted by them in relation to singular incident in exercise of power under Article 142 of the Constitution with a view to complete justice which empowers the Court give preference to equity and a justice oriented approach over the strict rigors of procedure of law. The Constitution of India gives exclusive jurisdiction to Supreme Court in this regard under

Article 142. Even the facts of case of Krishnalal Chawla were not similar to the facts of the present case.

11. Consequently, the impugned order cannot be sustained. It is vitiated by illegality and perversity.

12. Accordingly, present revision is **allowed** and the impugned order dated 8.2.2024, passed by learned Additional Sessions Judge/Special Judge, POCSO, Court No.13, Saharanpur, in Criminal Misc. Case No.542 of 2023, under Sections 377, 302, 201, 34 IPC and Section 3/4 of POCSO Act, Police Station Devband, District Saharanpur is, hereby, quashed.

13. The trial court is directed to proceed with the complaint filed by the revisionist in accordance with law and procedure prescribed under Section 15 of the Cr.P.C. after giving opportunity of hearing to the complainant.

Order Date :- 6.11.2024

Kamarjahan