

Court No. - 27

Case :- CRIMINAL REVISION No. - 123 of 2024

Revisionist :- Lallan Pathak @ Rakesh Kumar Pathak And 4 Others

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

Counsel for Revisionist :- Anand Pal Singh, Anshuman Singh Rathore

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Anshuman Singh Rathore, learned counsel for the revisionists and Sri Anurag Verma, learned A.G.A-I for the State.

2. By means of the instant criminal revision filed under Section 397/401 Cr.P.C, the revisionists have assailed the validity of the judgment and order dated 11.01.2024 passed by the Additional Session Judge/POCSO Act, Court No. 13, Sultanpur in Session Trial No. 1133/2023, (State Vs. Lallan Pathak And Others), whereby the application for discharge of the revisionists filed under Section 227 Cr.P.C., arising out of Case Crime No. 282/2022, under Section 323, 504, 506, 452, 308, 34 I.P.C, P.S-Lambhua, District Sultanpur was rejected.

3. The opposite party no.2 had lodged an F.I.R on 11.08.2022 against all the revisionists, stating that the accused persons wanted to damage a wall and when the complainant's father objected to it, all the accused persons had beaten up the complainant's father and his uncle by kicks, sticks, fists and bricks and the complainant also suffered injuries in the incident. It was further stated in the F.I.R that the accused persons had caused the incident with intention of killing the victims.

4. After investigation, a charge-sheet was submitted on 27.09.2022 for commission of offences under Sections 323, 504, 506, 452, 308, 34 I.P.C. The revisionist sought their discharge on the ground that the injuries suffered by the victims were simple in nature and were not on any vital part of their bodies.

5. The learned counsel for the revisionists has placed reliance upon a judgment of the Delhi High Court in **Smt. Narinder Kaur Oberoi and others Vs. State and another**, in Crl.Rev.P. No. 289/2014 and Crl.M.A No. 7916 of 2014 which was decided on 04.03.2015. The facts of the case before the Delhi High Court were that a sudden quarrel had taken place between the parties, who belonged to some family. They were taken to a hospital and were medically examined. They were fit to make statements. Despite that, they opted not to lodge

any complaint and decided to resolve the dispute amicably through the intervention of the relatives. FIRs were lodged after a considerable delay of three days, when the matter could not be settled. The High Court recorded a finding that the petitioners at no stage had intention or knowledge to commit offence under Section 308 I.P.C and quashed the proceedings..

6. In the present case, the F.I.R was lodged promptly and it has been categorically stated that the accused persons intended to kill the victims. Therefore, the decision of the Delhi High Court in **Smt. Narinder Kaur Oberoi** (supra) will not be able to the facts of the present case.

7. Sri. Anurag Verma, learned A.G.A-I has placed reliance upon the judgment of the Hon'ble Supreme Court in **State of Gujarat Vs. DiliSingh KishoreSingh Rao**, in Criminal Appeal No. 2504 of 2023 decided on 09.10.2023, wherein the Hon'ble Supreme Court held that:-

"10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu Vs. N. Suresh Rajan And Others (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any,

produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor Vs. Ramesh Chandra (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.

If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

15. The revisional court cannot sit as an appellate court and start appreciating

the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge."

8. When we examine the facts of the present case in light of the aforesaid law, it appears that the opposite party no.2 has alleged that the accused persons had beaten up his father and uncle and the complainant had also suffered injuries in the incident. The allegations have been supported by the material collected during investigation namely, the statements of the complainant and other two injured persons. The doctor who had conducted medico legal examination of Ram Prasad Pathak and Devanand Pathak, stated that both of them had suffered serious injuries on their head and any delay in their treatment could have resulted in their death also. The applicants have sought discharge on the sole ground that the CT scan examination and X-ray report does not mention any injury on any vital part of their body and the injuries caused are simple in nature.

9. Section 308 I.P.C reads as follows:-

"Whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

10. A bare perusal of the Section 308 I.P.C makes it clear that for commission of offence under Section 308 I.P.C, causing of injury is not an essential ingredient. The only thing is that in case the injuries are caused, the accused persons would be liable for an enhance sentence. From the allegations levelled in the F.I.R, the statements of the complainant and injured persons and the statement of the doctor who conducted medico legal examination of the injured persons, the case for trial of the applicants is clearly made out and their appears to be no good ground to discharge them.

11. The learned trial court has decided the application for discharge after taking into consideration all the relevant facts and circumstances of the case. I find no illegality in the impugned order dated 11.01.2024.

12. The instant revision lacks merits and the same is accordingly **dismissed**.

(Subhash Vidyarthi,J.)

Order Date :- 12.2.2024/Preeti.