

Court No. - 12

Case :- CRIMINAL MISC. WRIT PETITION No. - 2200 of 2018

Petitioner :- Jang Bahadur Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ramakar Shukla

Counsel for Respondent :- Govt. Advocate, Mukesh Kumar Sharma

Hon'ble Saurabh Lavania, J.

Case called out. Sri Ramakar Shukla, learned counsel for the petitioner and Sri S.P. Tiwari, learned AGA for the State of U.P. are present in the Court. However, no one appeared on behalf of the opposite party No. 2 despite the fact that the name of Sri Mukesh Kumar Sharma, Advocate is printed for the opposite party No. 2 in the cause list.

Taking note of the aforesaid and also the fact the instant petition is pending since 2018, this Court proceeded to hear this case on merits.

The present petition has been filed seeking following main relief:-

"i) to issue, a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 02.01.2018 passed by the learned Additional Sessions Judge, Court No.7, Sultanpur in Crl. Revision No. 234/2017 "Savitri Devi Vs. State of U.P, Police Station Dhammaur, District Sultanpur as contained in Annexure No.1 to this writ petition."

The order impugned dated 02.01.2018 passed by the Additional Sessions Judge, Court No.7, Sultanpur (in short "trial court") in Criminal Revision No. 234/2017 (Savitri Devi Vs. State of U.P) is extracted hereunder:-

"Judgment

This revision is filed by the revisionist against the order of the trial court dated 30.06.2017, dismissing the application of the revisionist moved u/s. 156 (3) Cr.P.C. for registration of the First Information Report.

Revision is preferred mainly on the grounds that revisionist is the lone widow of deceased Shiv Moorat Singh, there is only one daughter from revisionist and Shiv Moorat Singh, no son. Shiv Bahadur Singh son of Ganga Baksh Singh assuming to be Jang Bahadur Singh claiming to be son of Shiv Moorat Singh has got mutated his name on the property of Shiv Moorat Singh whereas Shiv Bahadur @ Jang Bahdur is not son of Shiv Moorat Singh, Ganga Baksh is father of Shiv Bahdur Singh, court has not inspected the documentary evidence in the original file and has passed the order, order passed by the trial court is against law. Prayed that revision be allowed.

Learned counsel for revisionist arguing on the revision stated that revisionist is widow of Shiv Moorat Singh, she has only one daughter Gyanmati, there was no

son from Savitri Devi and her husband Shiv Moorat Singh, Shiv Bahadur assuming to be Jang Bahdur, who is son of Ganga Baksh Singh has got mutated in the revenue record, his name on the property of Shiv Moorat Singh, Jang Bahadur Singh son of Shiv Moorat Singh and Shiv Bahadur Singh son of Ganga Baksh Singh is one and the same person, they are not two persons. Learned counsel for revisionist further argued that an application was moved by the revisionist for registration of the First Information Report, but this application was rejected by the trial court stating that matter is of civil nature. Arguing on this very point learned counsel for revisionist stated that the matter is not of civil nature, but it has criminal ramifications since Shiv Bahadur Singh and Jang Bahadur Singh are one and the same person and not two persons and he is fraudulently claiming to be the son of Shiv Moorat Singh, this can be unearthed by the investigation alone. Prayed that impugned order be quashed, revision be allowed.

Learned ADGC (Criminal) while arguing on the revision stated that trial court order dated 30.06.2017 is perfect order, is passed on merit and order of the trial court does not suffer from any illegality or irregularity. Prayed that revision be dismissed.

Heard learned counsel for revisionist, learned ADGC (Criminal), perused the revision & Criminal Misc. Case No. 4638/2017 Smt. Savitri Devi Vs. Shiv Bahadur Singh file.

This revision is filed by revisionist against the order of the trial court dated 30.06.2017, dismissing the application of the revisionist/applicant moved u/s. 156 (3) Cr.P.C. for registration of the First Information Report, concluding that matter is of civil nature. Criminal Misc. Case No. 4638/2017 Smt. Savitri Devi Vs. Shiv Bahadur Singh was filed by revisionist Savitri Devi under S. 156 (3) Cr.P.C. for registration of the First Information Report proclaiming that she is widow of Shiv Moorat Singh, she has lone daughter Gyanmati who is married and there is no son from revisionist Savitri Devi and her husband Shiv Moorat Singh. Shiv Bahadur Singh son of Ganga Baksh Singh proclaiming to be the son of Shiv Moorat Singh moved application before the consolidation authority for mutation on the property of Shiv Moorat Singh. It is also stated that Jang Bahadur son of Shiv Moorat and Shiv Bahadur son of Ganga Baksh are one and the same person, he got prepared a number of documents fraudulently, proclaiming to be son of Shiv Moorat Singh whereas he is not the son of Shiv Moorat Singh, this application was dismissed by the trial court citing rulings of Hon'ble Supreme Court- Indian Oil Corporation Vs. L.I.P.C. India Limited- [2006 (6) SCC 736] and Indar Mohan Goswami & other Vs. State Uttaranchal & other- [2008 (60) ACC] that matter is of civil nature and any criminal interventions is the abuses of the process of the court. It is emphatically stated by the revisionist/applicant in her S. 156 (3) Cr.P.C. application that there is only one daughter Gyanmati from revisionist and her husband Shiv Moorat Singh, there is no son, Jang Bahadur Singh is not her son whereas he is proclaiming to be the son of Shiv Moorat Singh. Shiv Bahadur Singh and Jang Bahadur Singh is one and the same person. This court fails to understand that despite this emphatic claim of the revisionist that Shiv Bahadur Singh and Jang Bahadur Singh are one and the same person, how this can be concluded that matter is of civil nature. It may be of civil in nature, but it has criminal aspect also which is to be investigated and be looked into whether Shiv Bahadur Singh and Jang Bahadur Singh is one person as is claimed by the revisionist or two persons or there is any son named Jang Bahadur Singh from revisionist and her husband Shiv Moorat Singh. This aspect can only be unearthed by the Police in due course in the investigation. Assuming the matter of civil nature would definitely cause in justice, the entire controversy requires thorough investigation by the Police. By dismissing S. 156 (3) Cr.P.C. application

trial court has given the wrong finding. Thus revision has got merit, deserves to be allowed.

Order

Criminal Revision No. 234/2017 Smt. Savitri Devi Vs. State of U.P. is allowed. Order of the trial court dated 30.06.2017 is quashed. Lower court is directed to pass suitable order in the light of the finding in this revision. Revisionist to be appears before the lower court on 22.01.2018."

A challenge has been made to the order impugned dated 02.01.2018 on the main ground to the effect that in view of the judgment passed by the Full Bench of this Court in the case of ***Jagannath Verma and others vs. State of U.P. and Another*** reported in ***[2014 (3) JIC 930 (All)(FB)]***, at the stage of revision, the prospective accused is entitled for hearing and in the instant case, it has not been done.

From a perusal of the impugned order dated 02.01.2018, quoted above, and also the averments made in paragraph 13 of the counter affidavit filed which are in response to paragraphs 9 to 11 of this petition, wherein, averments have been made based upon the judgment passed by the Full Bench of this Court in the case of ***Jagannath Verma (supra)***, this Court finds that opportunity of hearing was not provided to the petitioner at the stage of revision, though, in terms of the judgment passed by the Full Bench this Court in the case of ***Jagannath Verma (supra)***, the same ought to have been provided.

In view of the aforesaid, this Court is of the view that that the impugned order dated 02.01.2018 is liable to be interfered with. It is accordingly ***set-aside***. The matter is remanded back to the authority concerned for decision afresh as per law expeditiously.

The instant petition is ***allowed*** in above terms. Cost made easy.

Order Date :- 4.12.2024

Arun/-