

Court No. - 14

Case :- CRIMINAL REVISION No. - 1240 of 2024

Revisionist :- Jakir Husain

Opposite Party :- State Of U.P. Thru. Prin. Secy.
Home Lko. And 2 Others

Counsel for Revisionist :- Atul
Kumar, Pushpendra Chauhan

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Atul Kumar, learned counsel for the revisionist and Sri Rajesh Kumar Singh, learned A.G.A.-I for the State.

2. In view of the order proposed to be passed, notice to opposite party nos.2 and 3 is dispensed with.

3. The instant criminal revision under Section 397/401 Cr.P.C. has been filed by the revisionist against the judgment and order dated 07.09.2024, passed by Additional District Judge-2, Kahimpur Kheri in Criminal Revision No.80 of 2023, State of U.P. Forest Officer thorough Regional Forest Officer Belrayan vs. Jakir Husain.

4. Learned counsel for the revisionist has submitted that the innocent revisionist has falsely been implicated in the present case. His further submission is that initially the revisionist moved an application, seeking discharge in Range Case No.8/2010-11, under Sections 27/11, 29/51, 31/51, 35(6)/51, 39/51 Wild Life Protection Act and

Section 26, 41, 42 of Indian forest Act, which came to be allowed by learned Chief Judicial Magistrate, Lakhimpur Kheri vide order dated 15.04.2023 and the present revisionist came to be discharged for the offence under Sections 27/11, 29/51, 31/51, 35(6)/51, 39/51 Wild Life Protection Act and Section 26, 41, 42 of Indian forest Act.

5. His further submission is that aggrieved by the aforesaid order dated 15.04.2023, the opposite party nos.2 and 3 moved a criminal revision no.80 of 2023, which came to be allowed vide impugned order dated 07.09.2024 passed by Additional District Judge-2, Kahimpur Kheri and the order dated 15.04.2023, whereby the revisionist was discharged for the offence under Sections 27/11, 29/51, 31/51, 35(6)/51, 39/51 Wild Life Protection Act and Section 26, 41, 42 of Indian forest Act, came to be set aside.

6. His further submission is that the impugned order dated 07.09.2024 is palpably illegal in so far as it does not disclose application of judicial mind while passing the same. His further submission is that learned trial Court has failed to appreciate the fact that on the basis of material available before learned trial Court nothing transpired which would have enabled the learned trial Court to come to the conclusion that there is sufficient material to frame charge against the revisionist. His further submission is that in view of the aforesaid, the impugned order dated 07.09.2024 being palpably illegal, deserves to be set aside.

7. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that in fact the learned trial Court has rightly passed the impugned order dated 07.09.2024, which is well discussed and reasoned. His further submission is that it is settled law that charge against an accused may be framed even on the basis of grave suspicion also. Therefore, the instant criminal revision is liable to be dismissed.

8. Having heard learned counsel for parties and upon perusal of records, it transpires that initially the revisionist moved an application, seeking discharge in Range Case No.8/2010-11, under Sections 27/11, 29/51, 31/51, 35(6)/51, 39/51 Wild Life Protection Act and Section 26, 41, 42 of Indian forest Act, which came to be allowed by learned Chief Judicial Magistrate, Lakhimpur Kheri vide order dated 15.04.2023 and the present revisionist came to be discharged for the offence under Sections 27/11, 29/51, 31/51, 35(6)/51, 39/51 Wild Life Protection Act and Section 26, 41, 42 of Indian forest Act. Thereafter, aggrieved by the aforesaid order dated 15.04.2023, the opposite party nos.2 and 3 moved a criminal revision no.80 of 2023, which came to be allowed vide impugned order dated 07.09.2024 passed by Additional District Judge-2, Kahimpur Kheri and the order dated 15.04.2023, whereby the revisionist was discharged for the offence under Sections 27/11, 29/51, 31/51, 35(6)/51, 39/51 Wild Life Protection Act and Section 26, 41, 42 of Indian forest Act,

came to be set aside.

9. It is pertinent to mention that at the stage of framing charge, only prima facie case is to be seen, whether case is beyond reasonable doubt is not to be seen at this stage. If the court comes to the conclusion that the commission of offence is a probable consequence, a case for framing charge exists. At the stage of framing charge, probative value of materials on record cannot be gone into. At this stage, it is not necessary for the prosecution to establish beyond all reasonable doubts that the accusation which they are bringing against the accused person is bound to be brought home against them. At the stage of framing charge, the Court has to see if there is sufficient ground for presuming that the accused has committed an offence. If the answer is in affirmative, the order of discharge cannot be passed and the accused has to face trial.

10. To substantiate aforesaid proposition, the judgment rendered by Hon'ble the Apex Court in **State of Maharashtra & Ors. v. Som Nath Thapa & Ors., AIR 1996 SC 1744, Rajbir Singh vs. State of U.P. & others, AIR 2006 SC 1963** and **Srilekha Sentilkumar vs. Deputy Superintendent of Police, C.B.I., A.C.B. Chennai, (2019) 7 SCC 82** may be usefully referred to.

11. Therefore, in view of the aforesaid settled legal position, at this stage, only prima facie

availability of material warranting framing of charge against the revisionist is enough and no roving enquiry is required to ascertain veracity or otherwise of the prosecution case.

12. It is also to be noted with concern that the learned revisional court, while passing the impugned order dated 07.09.2024, in paragraph no. 22, made a categorical observation that the revisionist has discharged by the learned trial court vide order dated 15.04.2023. However, the record of the trial court revealed to the learned revisional court that no date on 15.04.2023 was ever fixed in the matter, and there is no entry of any application seeking discharge in the records of the learned trial court.

13. In view of the aforesaid overall facts and circumstances and discussion made hereinabove, this Court does not find illegality or infirmity in the impugned order dated 07.09.2024. Therefore, prayer made by the revisionist deserves to be declined and the same is, thus, declined.

14. Even otherwise, the learned trial Court vide impugned order dated 07.09.2024 has also given an opportunity to the revisionist to move a fresh application for seeking discharge before appropriate Court. In case, such an application is moved before the learned trial Court, the learned trial Court shall dispose of the same by a speaking and reasoned order strictly, in accordance with

law having regard to the entire facts and evidence available on record.

15. However, it is needless to mention that if the revisionist applies for grant of bail, the trial court shall consider and decide the same expeditiously, in accordance with law laid down by the Hon'ble Supreme Court in **Satender Kumar Antill vs. Central Bureau of Investigation and others** : MANU/SC/1024/2021.

16. In view of the aforesaid observations, the instant criminal revision is finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 18.10.2024
A.Dewal