

Neutral Citation No. - 2025:AHC:127684

Reserved on: 16.07.2025

Delivered on: 28.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 3308 of 2023

Revisionist :- Rustam Singh And 7 Others

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Ajay Vikram Yadav

Counsel for Opposite Party :- G.A.,Manvendra Singh,Pankaj Kumar

Hon'ble Rajeev Misra,J.

1. This criminal revision is directed against the order dated 16.01.2023 passed by Additional Sessions Judge/Special Judge (DAA), Mainpuri in Special Sessions Trial No. 11 of 2008 (Smt. Rekha Vs. Rustam Singh and Others) arising out of Complaint Case No. 337 of 2007 (Smt. Rekha Vs. Rustam Singh and Others) under Sections 395 and 397 IPC, Police Station-Bhogaon, District-Mainpuri, whereby the discharge application filed by revisionists in terms of Section 227 Cr.P.C. has been rejected by Court below.

2. I have heard Mr. Ajay Vikram Yadav, the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1 and Mr. Rishabh Tiwari, Advocate, holding brief of Mr. Manvendra Singh, the learned counsel representing first informant-opposite party-2.

3. Perused the record.

4. Record shows that in respect of an incident, which is alleged to have

occurred on 24/25.01.2007, a delayed FIR dated 21.08.2007 was lodged by first informant-opposite party-2 Smt. Rekha and was registered as Case Crime No. 656 of 2007, under Sections 395, 397 IPC, Police Station-Bhogaon, District-Mainpuri. In the aforesaid FIR, 9 persons namely - (1) Bhekam Singh, (2) Rustam, (3) Ghamandi, (4) Manjeet, (5) Vishram Singh, (6) Sandeep Kumar, (7) Anar Singh, (8) Mukesh Kumar and (9) Surendra Singh were nominated as named accused.

5. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. During pendency of investigation of aforementioned case crime number, complainant/opposite party-2 filed a complaint dated 03.11.2007 in the Court of Special Judge (Dacoity Affected Area), Mainpuri, which was registered as Complaint Case No. 337 of 2007 (Smt. Rekha Vs. Rustam Singh and Others) under Sections 395, 397 IPC, Police Station-Bhogaon, District-Mainpuri.

6. Subsequently, upon completion of statutory investigation of Case Crime No. 656 of 2007, Investigating Officer came to the conclusion that no offence as complained of is prima-facie established. He, therefore, opined to submit the final report. Accordingly, Investigating Officer, submitted the final report/police report dated 06.11.2008 in terms of Section 173(2) Cr.P.C.

7. First informant-opposite party-2 filed her protest petition against aforementioned police report dated 06.11.2008. However, the same came to be rejected by Court below for want of prosecution, vide order dated 06.11.2008.

8. Subsequent to the complaint dated 03.11.2007 filed by first informant-opposite party-2, Court below recorded the statement of first informant-opposite party-2 under Section 200 Cr.P.C. on 23.11.2007. This was followed by the statement of PW-1 Nathu Singh, whose statement was recorded on 11.12.2007, under Section 202 Cr.P.C. On the same day, the

statement of another witness i.e. PW-2 Kishan Devi was recorded under Section 202 Cr.P.C.

9. Court below upon appraisal and evaluation of the allegations made in the complaint dated 03.11.2007 in the light of the statements of the complainant and her witnesses formed a prima-facie opinion that the accused persons are liable to be summoned to face trial. Accordingly, Special Judge (DAA), Mainpuri passed the summoning order dated 18.01.2018 in Special Sessions Trial No. 11 of 2008, Police Station-Bhogaon, District-Mainpuri, whereby the revisionists were summoned to stand their trial in aforementioned Special Sessions Trial.

10. Feeling aggrieved by the aforesaid summoning order dated 18.01.2018 as well as the proceedings of above-mentioned Special Trial, revisionists approached this Court by filing an Application U/s 482 Cr.P.C. No. 12095 of 2011 (Rustam Singh and Another Vs. State of U.P. and Another). However, the same was disposed of finally, vide order dated 16.04.2011. For ready reference, the order dated 16.04.2011 is reproduced herein under:-

“Heard learned counsel for the applicants and learned A.G.A.

This application has been filed with a prayer to quash the proceedings of S.T.No. 11 of 2008 , pending in the court of learned Special Judge/Additional District Judge, Court No.3, Mainpuri.

It is contended by the learned counsel for the applicants that from the side of the applicants, three persons have been killed, its FIR has been lodged. In its counter blast the FIR of this case has been lodged in which after investigation, final report has been submitted, the same has been protested. The complaint of this case has been filed and statements under sections 200 and 202 Cr.P.C.have been recorded, after recording the statements, the learned Judge has taken the cognizance and summoned the applicants to face the trial by order dated 18.1.2008. The order dated 18.1.2008 is illegal, therefore, the proceedigns pending against the applicants may be quashed.

In reply to the above contention, it is submitted by the learned A.G.A. that such

pleas may be taken by the applicants before the court concerned by way of moving application under section 245(2) Cr.P.C.

Considering the facts, circumstances of the case and submission made by the learned counsel for the applicants and the learned A.G.A. it is directed that in case the applicants move application under section 245(2) Cr.P.C, before the court concerned, through their counsel within 30 days from today, the same shall be heard and disposed of expeditiously in accordance with the provisions of law.

Till the disposal of that application, no coercive steps shall be taken against the applicants.

With the above direction, this application is finally disposed of.”

11. Subsequently, the order dated 16.04.2011 was corrected by Court, vide order dated 04.05.2011. The same reads as under:-

“Heard the learned counsel for the applicants and the learned A.G.A.

This is correction application no. 137177 of 2011.

After perusing the record the order dated 16.4.2011 is hereby corrected by mentioning 227 Cr.P.C. in place of 245(2) Cr.P.C. in the third line of the fourth paragraph and in the third line of the fifth paragraph of the order.

Accordingly the correction application is allowed.”

12. In compliance of above order dated 16.04.2011/04.05.2011 passed by this Court, revisionists filed a discharge application dated 15.02.2014 in terms of Section 227 Cr.P.C. before Court below seeking their discharge in above-mentioned Special Sessions Trial. The discharge application filed by revisionists was opposed on behalf of complainant. However, no written objection appears to have been filed by her.

13. Ultimately, Court below examined the prayer made by means of the discharge application in the light of material on record. Court below came to the conclusion that as per the material on record, prima-facie, the prosecution of the accused can be sustained. Accordingly, Court below negated the prayer for discharge prayed by the revisionists. Resultantly, by means of an order dated 16.01.2023 passed by Additional Sessions Judge/Special Judge (DAA), Mainpuri, the discharge application filed by

revisionists was rejected.

14. Thus, feeling aggrieved by the above order dated 16.01.2023, revisionists have now approached this Court by means of present criminal revision.

15. Mr. Ajay Vikram Yadav, the learned counsel for revisionists submits that the order impugned in present criminal revision is manifestly illegal and without jurisdiction. Court below has not considered the material on record while dismissing the discharge application filed by revisionists. It is an admitted fact to the complainant/opposite party-2 that she had lodged an FIR dated 21.08.2007 in respect of the same criminality. Investigating Officer upon completion of statutory investigation of concerned case crime number had submitted the final report/police report dated 06.11.2008. First informant-opposite party-2 had filed her protest petition against the same. However, the protest petition filed by first informant-opposite party-2 was rejected by Court below for want of prosecution, vide order dated 06.11.2008. The order dismissing the protest petition for want of prosecution has not been challenged by first informant-opposite party-2, as such, the same has been allowed to become final. On the above premise, it was thus submitted by the learned counsel for revisionists that once the first informant-opposite party-2 had chosen to lodge an FIR then the complaint in respect of the same criminality shall not be maintainable. As such the proceedings of the subsequent complaint case are not only malicious, an abuse of the process of Court but also not maintainable.

16. It was then contented by the learned counsel for revisionists that the occurrence giving rise to present criminal proceedings is alleged to have occurred on 24/25.01.2007, whereas the complaint was filed on 03.11.2007. As such, the complaint is highly belated. However, neither in the complaint nor in the statement of complainant recorded under Section 200 Cr.P.C. before Court below, any explanation has come forward

regarding the delay in lodging the complaint. As such, the delay in lodging the complaint remains unexplained. Referring to the judgments of Supreme Court in (i). **P. Ramchandra Rao Vs. State of Karnataka, (2002) 4 SCC 578**, (ii). **P. Rajagopal and others Vs. The State of Tamil Nadu, AIR 2019 SC 2866 (paragraph 8)**, (iii). **Hasmukhlal D. Vora and Another Vs. The State of Tamil Nadu, 2022 SCC OnLine 1732** , (iv). **Sekaran Vs. State of Tamil Nadu, (2024) 2 SCC 176** and (v) **Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh and Others, 2024 SCC OnLine SC 938**, it was contended by the learned counsel for revisionists that the Apex Court in aforementioned judgments has itself observed that where the FIR is belated and no explanation has come forward explaining the delay in lodging the FIR then the prosecution of an accused on the basis of such a belated FIR cannot be sustained. Much emphasis was placed upon the judgment of Supreme Court in the case of **Shivendra Pratap Singh Thakur (Supra)**, wherein the Apex Court quashed the criminal prosecution of the accused therein on the ground that there is an unexplained delay of 39 days in lodging the FIR. It was thus urged by the learned counsel for revisionists that in view of above, the criminal prosecution of revisionists cannot be sustained. As such, the present criminal revision is liable to be allowed.

17. Per contra, the learned A.G.A. representing State-opposite party-1 and Mr. Manvendra Singh, the learned counsel representing first informant-opposite party-2 have vehemently opposed the present criminal revision. They submit that Court below while dealing with the discharge application filed by revisionists/accused can only consider the material on record and on basis thereof find out as to whether as per the material on record, the prosecution of an accused can be sustained or not. Court is not required to return a finding that as per the material on record, it is the conviction of accused, which is possible but whether as per the material on record, the prosecution of an accused can be sustained or not? On the above premise, it was thus sought to be contended by the learned A.G.A.

as well as the learned counsel representing complainant-opposite party-2 that since the complainant and her witnesses in their statements under Sections 200/202 Cr.P.C. have fully supported the complaint, therefore, prima-facie opinion was formed by Court below to summon accused/revisionists. Since no new material emerged on record of the concerned Special Sessions Trial, subsequent to the summoning order passed by Court below, therefore, no good ground had emerged to discharge the accused/revisionists. In short, the submission is that in view of the probative value of the material on record, the prosecution of accused/revisionists can be sustained. It was thus contended that in view of above, the present criminal revision is liable to be dismissed.

18. Having heard the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1, the learned counsel representing complainant-opposite party-2 and upon perusal of record, this Court finds that it is an admitted fact that in respect of an occurrence alleged to have occurred on 24/25.01.2007, complainant-opposite party-2 had initially lodged an FIR dated 21.08.2007, which was registered as Crime No. 656 of 2007, under Sections 395, 397 IPC, Police Station-Bhogaon, District-Mainpuri. After aforementioned FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter-XII Cr.P.C. During the pendency of investigation of above-mentioned case crime number, complainant/opposite party-2 lodged a complaint dated 03.11.2007. It is thus apparent that parallel remedies were adopted by complainant/opposite party-2 for the same wrong, which is otherwise not permissible in law.

19 Investigating Officer after completion of statutory investigation of concerned case crime number, submitted the final report/police report dated 06.11.2008. The complainant-opposite party-2 had filed her protest petition to the same. It is apposite to mention here that under the Code i.e. Cr.P.C., there is no provision for filing a protest petition against the police

report. However, the said right is now available to the first informant by virtue of the judgment of Supreme Court in **Bhagwant Singh Vs. Commissioner of Police And Another, (1985) 2 SCC 537**. The protest petition filed by first informant-opposite party-2 came to be dismissed for want of prosecution, vide order dated 06.11.2008. However, no attempt was made by complainant/opposite party-2 to either seek recall of the said order or overcome the same by challenging it before higher forum. As such, the same has become final. In view of above, the filing of complaint by complainant/opposite party-2 in respect of the same criminality, in respect of which, earlier FIR was lodged amounts to an abuse of the process of Court. In view of above, once the proceedings by way of complaint case are itself not maintainable then the summoning order passed by Court below cannot be sustained either in law or on fact. As such, the impugned proceedings itself are liable to be quashed.

20. In view of the discussion made above, the present criminal revision succeeds and is liable to be allowed.

21. It is, accordingly, **allowed**.

22. The order impugned dated 16.01.2023 passed by Additional Sessions Judge/Special Judge (DAA), Mainpuri in Special Sessions Trial No. 11 of 2008 (Smt. Rekha Vs. Rustam Singh and Others) arising out of Complaint Case No. 337 of 2007 (Smt. Rekha Vs. Rustam Singh and Others) under Sections 395, 397 IPC, Police Station-Bhogaon, District-Mainpuri as well as the entire proceedings of above mentioned Special Sessions Trial shall stand quashed.

23. In the facts and circumstances of the case, the parties shall bear their own costs.

Order Date :- 28.07.2025

Vinay