

Neutral Citation No. - 2025:AHC:127726

Reserved on: 16.07.2025

Delivered on: 28.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 2250 of 2023

Revisionist :- Danish Ali And Another

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

Counsel for Revisionist :- Mohit Singh, Shikhar Neelkanth

Counsel for Opposite Party :- G.A., Jitendra Singh

Hon'ble Rajeev Misra, J.

1. This criminal revision has been filed by charge sheeted accused Danish Ali and Tariq Ali challenging the order dated 13.02.2023 passed by Chief Judicial Magistrate, Moradabad in Case No. 9676 of 2018 (State Vs. Danish Ali and Another) arising out of Case Crime No. 88 of 2018, under Section 304A IPC, Police Station-Pakbara, District-Moradabad whereby the discharge application filed by the revisionists in terms of Section 239 Cr.P.C. has been rejected.

2. I have heard Mr. Mohit Singh, the learned counsel for revisionists and the learned A.G.A. for State-opposite party-1.

3. Perused the record.

4. It transpires from record that in respect of an incident, which is alleged to have occurred on 31.03.2018, a delayed FIR dated 02.04.2018, was lodged by first informant-opposite party-2 Km. Anita Yadav and was registered as Case Crime No. 0088 of 2018, under Section 304A IPC,

Police Station-Pakbara, District-Moradabad. In the aforesaid FIR, three persons namely - (1) Iftekhar Ali, (2) Danish Ali and (3) Tariq Ali were been 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. The inquest (Panchnama) of the body of deceased was conducted on 31.03.2018. However, in the opinion of the witnesses of inquest (Panch witnesses), no definite opinion could be given regarding the nature of death of deceased i.e. whether it is homicidal or suicidal. Thereafter, post mortem of the body of deceased was conducted on 01.04.2018. The Autopsy Surgeon, who conducted autopsy of the body of deceased, came to the conclusion that no injury was seen all over the body of deceased. As such, the cause of death of deceased could not be ascertained. Accordingly, the viscera was preserved. Thereafter, the Investigating Officer recorded the statement of various witnesses including first informant. On the basis of above and other material collected by Investigating Officer, during course of investigation, he came to the conclusion that offence complained of is established against two of the named accused i.e. the revisionists herein, who were charge sheeted under Section 304-A IPC, whereas another named accused Iftekhar Ali was exculpated.

6. After submission of aforementioned charge sheet/police report, cognizance was taken upon same by the Jurisdictional Magistrate in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Resultantly, Case No. 9676 of 2018 (State Vs. Danish Ali and Another) arising out of Case Crime No. 88 of 2018, under Section 304A IPC, Police Station-Pakbara, District-Moradabad came to be registered. Accordingly, charge sheeted accused i.e. the revisionists were summoned.

7. At this juncture, the revisionists filed their discharge application dated 24.11.2022 in terms of Section 239 Cr.P.C. before Court below seeking

their discharge in above-mentioned criminal case on various grounds. The discharge claimed by accused/revisionists was opposed by the prosecution. Court below, thereafter, evaluated the grounds raised in support of the discharge application in the light of material accompanying the police report as well as the parameters that are required to be observed while considering the discharge application. Having undertaken the aforesaid exercise, Court below came to the conclusion that prima-facie there is evidence on record to sustain the trial of accused. Accordingly, by means of order dated 13.02.2023 passed by the Chief Judicial Magistrate, Moradabad, the discharge application filed by accused was rejected.

8. Thus, feeling aggrieved by the above order dated 13.02.2023, revisionists have approached this Court by means of present criminal revision.

9. Mr. Mohit Singh, the learned counsel for revisionists with reference to the material on record submits that prima-facie no offence can be said to be made out against revisionists inasmuch as, there is nothing on record to show that revisionists had any intention to commit the alleged act. He has then taken the Court to paragraphs 33, 34, 35, 36, 37, 38, 39, 40 and 41 of the affidavit filed in support of present criminal revision to show the bona-fide of revisionists, which in turn, leads to the innocence of the revisionists. On the above conspectus, he, therefore, contended that the order impugned is manifestly illegal and therefore, liable to be set-aside by this Court.

10. Per contra, the learned A.G.A. representing State/opposite party-1 has vehemently opposed the present criminal revision. He submits that Court, while considering the discharge application has to answer three questions; (A) Whether as per the papers accompanying the police report, offence complained of is made out against accused?, (B) Whether there is evidence against accused to sustain prosecution of accused? And (C) Whether the prosecution of accused can be sustained on the ground of

grave suspicion?. Court below upon evaluation of the material on record has returned a clear finding that sufficient evidence is on record to sustain the prosecution of accused. He has then referred to the judgment of Supreme Court in **State by Karnataka Lokayukta Vs. M.R. Hiremath, (2019) 7 SCC 515**, wherein Court has laid down the parameters regarding exercise of jurisdiction under Section 239 Cr.P.C. Reliance is placed upon paragraph 25 of the aforesaid report, which reads as under:-

“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of [Section 239 of the CrPC](#). The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In the [State of Tamil Nadu v N Suresh Rajan10](#), advertng to the earlier decisions on the subject; this Court held :

“29...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. On the above conspectus, the learned A.G.A. would submit that no illegality has been committed by Court below in passing the order impugned as prima-facie the prosecution of accused-revisionists can be sustained. It was also contended by the learned A.G.A. that revisionists have taken contradictory stands as is evident from the averments in the affidavit filed in support of present criminal revision and relied upon by the learned counsel for revisionists. In view of above, the defence i.e.

accused-revisionists are themselves not clear about the exact defence, which they want to rely upon. On the above premise, the learned A.G.A. thus urged that no interference is warranted by this Court in present criminal revision.

12. When confronted with above, the learned counsel for revisionists could not overcome the same.

13. Having heard the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1 and upon perusal of record, this Court finds that the objections raised by the learned A.G.A. in opposition to this criminal revision are clearly borne out from the record and furthermore, the same could not be dislodged by the learned counsel for revisionists with reference to the record. In view of above, no good ground exists to entertain the present criminal revision.

14. As a result, the present criminal revision fails and is liable to be dismissed.

15. It is, accordingly, **dismissed**.

Order Date :- 28.07.2025.

Vinay