

Neutral Citation No. - 2025:AHC:111620

Order Reserved on : 03.07.2025

Order Delivered on : 09.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 3475 of 2023

Revisionist :- Anil And 3 Others

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

Counsel for Revisionist :- Abhitab Kumar Tiwari

Counsel for Opposite Party :- G.A., Mayank Yadav, Vivek Kumar Singh

Hon'ble Rajeev Misra, J.

1. Challenge in this Criminal Revision is to the order dated 28.3.2023 passed by Additional Sessions Judge, Court No. 12, Meerut in Sessions Trial No. 684 of 2018 (State Vs. Anil and others) under Sections 147, 148, 149, 307, 323 IPC, Police Station Sardhana, District Meerut, arising out of Case Crime No. 303 A of 2001, under Sections 147, 148, 149, 307 and 323 IPC, Police Station Sardhana, District Meerut, whereby the application dated 17.10.2022, under Section 216 Cr. P. C. filed by accused revisionists has been rejected.

2. Perused the record.

3. I have heard Mr. Abhitab Kumar Tiwari, the learned counsel for revisionists, the learned A.G.A. for State opposite party 1 and Mr. Vivek Kumar Singh, the learned counsel representing first informant opposite party 2.

4. Record shows that in respect of an incident, which is alleged to have occurred on 16.08.2001, a prompt F.I.R. dated 16.08.2001 was lodged on 16.08.2001 itself by first informant opposite party 2 Kamlendra and was registered as Case Crime No. 303 A of 2001, under Sections 147, 148, 149, 307 and 323 IPC, Police Station Sardhana, District Meerut. In the aforesaid F.I.R. 5 persons namely Mahavir, Alin, Raju alias Sanjay, Suresh

alias Asharam and Yogendra were nominated as named accused. In the aforesaid occurrence dated 16.08.2001, three persons namely Pushpendra, Jaswant and Birbal are alleged to have sustained injuries. Their injury reports are on record from pages 27-33 of the paper book. As per their injury reports, all injuries were simple in nature and none of the injured had sustained firearm injury.

5. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned Case Crime Number in terms of Chapter XII Cr. P. C.

6. On the basis of material collected by him during course of investigation, he came to the conclusion that no offence as complained of is prima facie established. He, therefore, submitted a final report/police report dated 19.9.2001 in terms of Section 173 (2) Cr. P. C. Upon submission of aforementioned final report/police report dated 19.9.2001, the Jurisdictional Magistrate in exercise of jurisdiction under Section 190 (1) (b) Cr. P. C. rejected the same and directed for further investigation.

7. Thereafter, Investigating Officer further investigated the matter, but nothing new was discovered by him to establish the commission of offence complained of. Consequently, Investigating Officer again submitted a final report/police report dated 14.9.2001.

8. After the second final report/police report dated 14.9.2001 was submitted by the Investigating Officer, the Jurisdictional Magistrate in exercise of jurisdiction under Section 191 (1) (b) upon perusal of the papers accompanying the police report came to the conclusion that commission of a cognizable offence is clearly made out. He, accordingly, took cognizance against accused and summoned them for an offence under Sections 147, 148, 149, 307 and 323 IPC.

9. Feeling aggrieved by the Cognizance Taking Order/Summoning Order passed by the concerned Magistrate, accused Mahabir and others filed a Criminal Revision before the Sessions Judge, Meerut, which was

registered as Criminal Revision No. 29 of 2003 (Mahavir and others Vs. State of U.P.). Aforementioned Criminal Revision came to be dismissed by the Sessions Judge, Meerut, vide order dated 22.5.2003.

10. Against above order, accused Mahavir and others approached this Court by filing an application under Section 482 Cr. P. C. No. 4488 of 2003 (Mahavir and others Vs. State of U.P. and another). Aforementioned application under Section 482 Cr. P. C. was disposed of finally by this Court, vide order dated 27.01.2016. For ready reference, the order dated 27.1.2016 is reproduced herein below:-

“Heard Sri Sunil Vashisth, learned counsel for the applicants, Sri Abhishek Tripathi, learned counsel for respondent no. 2 and learned AGA are present.

It appears that respondent no. 2 lodged a First Information Report (in short, FIR) registered at Case crime no. 303-A of 2001 under sections 147, 148, 149, 307 IPC, Police Station Sardhana, District Meerut against five persons alleging that they have been assaulted and beaten by the accused persons and that fire-arms were used in this assault. The matter was investigated and final report was submitted on 9.9.2001. The matter was again sent for further investigation under section 173(8) Cr.P.C. The Investigating Officer again enforced final report earlier filed by his report dated 14.9.2001. Respondent no. 2 filed protest petition before the Magistrate and incriminating materials were placed before the Magistrate. The Magistrate only considered the materials submitted along with case diary by the Investigating Officer. Thereafter, considering the said materials, the Magistrate took cognizance under section 190(b) Cr.P.C. while rejecting the final report. A State case was registered. This order was challenged by filing Criminal Revision No. 29 of 2003 (Mahavir and others versus State of U.P.) before the Sessions Judge, which was rejected by Sessions Judge, Meerut vide order dated 22.5.2003. This order is under challenge in the application under section 482 Cr.P.C. before this Court.

Learned counsel for the applicants has submitted that statement of witnesses recorded by the Investigating Officer did not convince the Investigating Officer and therefore, no charge sheet was filed. Learned counsel further submitted that in view of the above, learned Magistrate should have refrained from summoning the petitioner and others.

First of all, applicants had challenged this order by filing criminal revision which was dismissed and there was no occasion for them to file Application under section 482 Cr.P.C. after dismissal of the criminal revision. In any case, it is apparent that learned Magistrate was authorized to entertain the matter in view of the law laid down by this Court in Pakhandu and others Vs. State of U.P. and another reported in 2001 (43) ACC 1096.

Learned A.G.A. submits that the impugned orders passed by the courts below are absolutely just and legal and are in accordance with law and no interference is called for by this court. He further submits that in the present case, after submission of the final report on the protest petition of the complainant, the courses available to the learned Magistrate on receiving the protest petition has been very well laid down by this Court in the case of Pakhandu and others Vs. State of U.P. The same reads as follows:-

- "1. He may agreeing with the conclusion arrived at by the police, accept the report and drop the proceedings. But before doing so, he shall give an opportunity of hearing to the complainant; or
2. He may take cognizance under Section 190(1) (b) and issue process straight way to the accused without being bound by the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the Police, there is sufficient ground to proceed; or
3. He may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner; or
4. He may, without issuing process or dropping the proceedings decide to take cognizance under Section 190(1) (a) upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202 Cr.P.C. and thereafter decide whether complaint should be dismissed or process should be issued".

It is pertinent to point out that learned Magistrate opted for the second course in the judgment in Pakhandu case (Supra). He rejected the protest petition and straight away summoned the accused persons for trial. The applicants were summoned on the basis of material available. It is, therefore, apparent that cognizance was taken under section 190(1) (b) Cr.P.C. and procedure adopted by the Magistrate is logical and legal.

Keeping in view of the aforesaid facts, I find no scope for interference in the impugned order passed by the trial court at this stage. There is no illegality, perversity or jurisdiction error in the order impugned.

The prayer for quashing the impugned orders is refused. However, considering the facts and circumstances of the case, if the applicants appear before the Court below in compliance of the summoning order passed by the Court below within 15 days of this order and applies for bail, their prayer for bail shall be considered and disposed of in accordance with the observations of the Full Bench of this Court in Amrawati and another Vs. State of UP, 2005 Cri. LJ 755, affirmed by the Supreme Court in Lal Kamendra Pratap Singh Vs. State of UP, (2009) 4, SCC 437. For a period of 15 days or till the disposal of their bail application, no coercive action shall be taken against the applicants.

Accordingly, the writ petition is disposed off finally.”

11. Since offence complained of is triable exclusively by the Court of Sessions, therefore, the Jurisdictional Magistrate committed the case to the Court of Sessions in terms of Section 209 Cr. P. C.

12. The concerned Sessions Judge proceeded with the trial. He, accordingly, framed charges against charge sheeted accused. Accused denied the charges so framed by pleading innocence. They, therefore, demanded trial. Resultantly, the trial procedure commenced.

13. Upto this stage, four prosecution witnesses namely P.W. 1 Kamendra, P.W. 2 Brahma Singh, P.W. 3 Pramod Kumar and P.W. 4 Pushpendra have deposed before Court below.

14. At this juncture, accused/revisionists filed an application dated 17.10.2022 under Section 216 Cr. P. C. with the prayer that since the ingredients of Section 307 IPC are not satisfied as per the deposition of aforementioned witnesses, therefore, the charges under Section 307 IPC framed against revisionists be deleted and the charges be altered accordingly, so that justice be done.

15. Aforementioned application filed by accused was opposed by the prosecution. Accordingly, written objections to the same were filed on behalf of the prosecution.

16. Ultimately, Court below examined the grounds raised in the application dated 27.1.2016 in the light of the material on record as per the provisions contained in Section 216 Cr. P. C. and came to the conclusion that no good or sufficient ground has emerged so as to alter the charges framed against accused revisionists by deleting the charge previously framed under Section 307 IPC. It, accordingly, rejected the application dated 27.01.2016, vide order dated 28.03.2023 passed by Additional Sessions Judge, Court No. 12, Meerut.

17. Thus feeling aggrieved by the above order dated 28.03.2023 accused revisionists have now approached this Court by means of present criminal revision.

18. At the very outset, the learned A.G.A. representing State opposite party 1 has raised a preliminary objection regarding the maintainability of the application under Section 216 Cr, P. C. filed by accused revisionists before Court below. He submits that Section 216 Cr. P.C. manifests the power of the Court and therefore, no application under Section 216 Cr. P. C. can be filed by either of the parties. To buttress his submissions, he has relied upon the judgement of the Supreme Court in **P. Kartikalakshmi Vs. Sri Ganesh and Another, (2017) 3 SCC 347**, wherein the Bench in paragraph 7 of the report has observed in categorical terms that no party to the trial has a right to file an application under Section 216 Cr.P.C.

19. It was then contended by the learned A.G.A. that even if the charges are altered by Court in exercise of jurisdiction under Section 216 Cr. P. C. the charges previously framed cannot be deleted. In support of above, the learned A.G.A. has referred to the judgement of the Supreme Court in **Directorate of Revenue Intelligence Vs. Raj Kumar Arora and others,**

2025 SCC ONLINE SC 819. Paragraph 154 of the report is relevant for the controversy in hand. Accordingly, the same is extracted herein under:-

“154. We are in agreement with the view that once charges have been framed by the Trial Court in exercise of the powers under Section 228 CrPC, the accused cannot thereafter be discharged, be it through an exercise of the powers under Sections 227 or 216 CrPC. It is reiterated that the language of Section 216 CrPC provides only for the addition and alteration of charge(s) and not for the deletion or discharge of an accused. If the Legislature had intended to empower the Trial Court with the power to delete a charge at that stage, the same would have been expressly and unambiguously stated. Therefore, at such a stage of the trial, the accused must necessarily either be convicted or acquitted of the charges that were so framed against him. No shortcuts must be allowed.”

20. On the above conspectus, the learned A.G.A., therefore, urged that in view of the categorical pronouncements made by the Apex Court, neither the application under Section 216 Cr. P. C. filed by accused revisionists was maintainable nor the charge under Section 307 IPC can be deleted.

21. Learned A.G.A. has then invited the attention of Court to the deposition of P.W., 1 Kamendra, wherein he has stated that accused fired a shot on account of which Pushpendra sustained injury on his shoulder. Similar is the statement of P.W. 2 Brahama Singh, wherein he has stated that Asharam fired a shot on account of which Pushpendra sustained gun shot injury on his left shoulder. P.W. 3 Pramod Kumar has also deposed before Court below in the same manner. On the above premise, the learned A.G.A. thus contended that no illegality has been committed by Court below in passing the order impugned. As such, present criminal revision is liable to be dismissed.

21A. Mr. Vivek Kumar Singh, the learned counsel for first informant/opposite party 2 has also adopted the submissions urged by the learned A.G.A. in opposition to this criminal revision.

22. When confronted with above, the learned counsel for revisionists made a futile attempt to overcome the objections raised by the learned

A.G.A. He submitted that since the medical examination does not support the ocular version of the occurrence, therefore, no prosecution of revisionists under Section 307 IPC can be sustained. However, he could not overcome the objection raised by the learned A.G.A.

23. Having heard the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1, the learned counsel representing first informant opposite party 2 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 at this stage. In view of above, no good ground exists to entertain the present criminal revision.

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

25. It is, accordingly, **dismissed**.

Order Date :- 09.07.2025

HSM