
(2016) 09 AHC CK 0008

In the Allahabad High Court

Case No : Penal Code, 1860 (IPC) - Section 281, Section 34, Section 420,
Section 467, Section 568

Mahipal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Criminal Revision No. 3461 of 2013

Citation : (2017) 99 ACrC 481

Hon'ble Judges : Prabhat Chandra Tripathi, J.

Bench : Single Bench

Advocate : Kuldeep Kumar, Advocate, for the Revisionist; Govt. Advocate, for the Opposite Party

Final Decision : Dismissed

Judgement

Prabhat Chandra Tripathi, J.—Case called out. Sri Kuldeep Kumar, learned counsel for the revisionist and Sri L.D. Rajbhar, learned A.G.A. for the State of U.P. are present. None responds on behalf of the opposite party no.2.

2. Learned counsel for the revisionist has stated that in Application U/s 482 No.23466 of 2010 (Virendra Pal Singh v. State of U.P. & another) Co-ordinate Bench of this Court by it's order dated 21.07.2010 has ordered as follows:

"Till the next date of listing, further proceedings of Complaint Case No.1719 of 2007 and Case No.152 of 2007, under Sections 420, 467, 568, 218/34 IPC, P.S. Kotwali Dehat, District Bulandshahar shall remain stayed against the applicant only."

It has been argued by the learned counsel for the revisionist that the present revision has been filed regarding the same set of incident and the similar order may also be passed by this Court.

3. Learned counsel for the revisionist has placed reliance upon the judgement of

this Court in Ramesh Chandra Bhatia v. State of U.P. [2012 (76) ACC 985].

4. The facts and circumstances of the case in hand are totally different from the facts and circumstances cited in the above Ruling.

5. The present criminal revision has been preferred against the judgement and order dated 26.11.2013 passed by the learned Chief Judicial Magistrate, District Bulandshahr in complaint case no.1390 of 2013 (Gopi v. Govind Ram and others), under Sections 420, 467, 468, 218/34 I.P.C., Police Station Kotwali Dehat, District Bulandshahr, whereby learned Magistrate has rejected the discharge application under Section 245 (2) Cr.P.C.

6. Heard the learned counsel for the parties and perused the record. Accused persons Govind Ram, Ram Singh and Mahipal have preferred Application under Section 245 (2) Cr.P.C. dated 06.01.2009 before the court of the learned II A.C.J.M., Bulandshahr in complaint case no.1719 of 2007 (Gopi v. Govind Ram etc.), under Sections 420, 467, 468, 218/34 I.P.C., Police Station Kotwali Dehat, District Bulandshahr with the prayer that since the case before the Consolidation Officer, Bulandshahr was fixed on 25.09.2004 but the complainant had no knowledge about that date so he could not attend the court and prayed to fix another date 05.10.2004. On 29.09.2004 the Consolidation Officer had passed a non-speaking order by writing "Restored", although, no restoration application was presented to restore the order dated 25.09.2004.

7. The complainant has presented this application before the Consolidation Officer, Bulandshahr on 10.03.2006 to restore the ex-parte order dated 25.09.2004. In other words, the complainant has presented a false and vague complaint.

8. When the aforesaid ex-parte order dated 25.09.2004 was restored on 05.10.2004 and on merit it was finally decided in favour of accused Mahipal on 14.03.2008. In other words the complainant did not suffer any loss.

9. The complainant presented an application under Section 156(3) Cr.P.C. before the learned Chief Judicial Magistrate, Bulandshahr on date 17.04.2006 which was allowed and order for registration of F.I.R. against the accused persons was passed. Against this order of the learned Chief Judicial Magistrate, Bulandshahr dated 17.04.2006 Criminal Revision No.322 of 2006 was preferred which was allowed vide order dated 17.06.2008 with the direction of rehearing the application and thereafter the learned Chief Judicial Magistrate, Bulandshahr passed another order dated 16.07.2008 that the application should be treated as complaint case.

10. On the application under Section 156 (3) Cr.P.C. case was registered in case crime no.C18 of 2006 in Police Station Kotwali Dehat, District Bulandshahr which culminated into filing of final report by the Police concerned.

11. The complainant had filed a complaint case on the same facts in March, 2007 before the learned Chief Judicial Magistrate, Bulandshahr, on which the learned

Chief Judicial Magistrate, Bulandshahr passed an order of summoning the accused persons on 11.09.2007. Against this order, the accused persons had preferred Application U/s 482 Cr.P.C. No.33978 of 2008 before this Court. This Court passed an order and directed the revisionist to move an application under Section 245 (2) Cr.P.C. before the learned Magistrate.

12. It was mentioned in the application dated 06.01.2009 presented before the learned court of the II Additional Chief Judicial Magistrate, Bulandshahr in complaint case no.1719 of 2007 that the records of the case no.5736 of 2008 (Gopi v. Govind Ram etc.), under Sections 420, 467, 468, 218 I.P.C. which was pending in the court of the learned Additional Civil Judge (Junior Division), Court No.2 and also the F.I.R. relating to Gopi v. Govind Ram etc. which was pending in the court of the learned Chief Judicial Magistrate, Bulandshahr, on the aforementioned reasons, the accused persons Ram Singh, Govind Ram and Mahi Pal prayed that there was no evidence against them under Sections 420, 467, 468, 218 I.P.C. and they may be discharged of the aforesaid offences. The said application came up for decision before the court of the learned Chief Judicial Magistrate, Bulandshahr in complaint case no.1390 of 2013 (Gopi v. Govind Ram and others) on 26.11.2013 and the learned Chief Judicial Magistrate, Bulandshahr after hearing both the parties and perusal of the records, passed the order on merit and thereby dismissed the aforesaid application under Section 245 (2) Cr.P.C. of the accused Ram Singh, Govind Ram and Mahi Pal.

13. In exercise of revisional jurisdiction of this Court under Section 397 Cr.P.C. there is very narrow compass to re-appreciate and re-evaluate the evidence either oral or documentary before it; which is available in the appellate jurisdiction. Section 397 of Code of Criminal Procedure, 1973 is quoted verbatim as follows:

"397.Calling for records to exercise of powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.-All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If any application under this section has been made by any person either to

the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

14. The revisional jurisdiction does not postulate re-appreciation of evidence, but that should be appreciated in the light of the limitation on the right to go in appeal, *Islamuddin v. State*, 1975 Cri LJ 841, 842 (Del HC). *G. Vasudevan v. K.M. Malabari*, 1978 Mad LJ (Cri) 617; *Bundoo v. Smt. Mahrul Nisa*, 1978 All LJ 1002 (All HC).

15. I have gone through the impugned order dated 26.11.2013 passed by the learned Chief Judicial Magistrate, Bulandshahr in complaint case no.1390 of 2013 (*Gopi v. Govind Ram and others*) in which learned Chief Judicial Magistrate has exercised it's judicial mind and passed the impugned order dated 26.11.2013 on the basis of the evidence either oral or documentary available before the court.

16. There is no occasion to interfere with the same. There is no illegality, impropriety or perversity to interfere at this stage. The revision sans merit and is liable to be dismissed.