

Court No. - 67

Case :- CRIMINAL REVISION No. - 1314 of 2022

Revisionist :- Sunny Yadav And Another

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Sushil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard Sri S. K. Mishra, learned counsel for the revisionists and learned A.G.A. for the State and perused the record.

By means of this criminal revision, revisionist is assailing the legality and validity of the order dated 30.11.2021 passed by Sessions Judge/Special Judge (POCSO) Act, Court No.4, Gorakhpur by which in exercise of power under Section 319 Cr.P.C. revisionists Sunny Yadav and Devvrat @ Deobrat Chaudhari were summoned to face prosecution by way of S.S.T. No. 783 of 2018 (State Vs. Monu) arising out of Case Crime No. 9370 of 2018, under Sections 363 and 376 I.P.C., PS Barhalganj, District Gorakhpur.

Brief facts of the case are that the present F.I.R. was registered by first informant Triloki Gaur against Monu, Devvrat and Sunny Yadav allegedly enticing away the minor girl of the informant. The girl in her statement under Section 164 Cr.P.C. has clearly indicated that the revisionists committed alleged sexual assault upon her even though not relying upon the affidavit, the police personnel after playing partisan role have absorbed the revisionists from the charge sheet. However, in exercise of

power under Section 319 Cr.P.C., the revisionists were summoned to face trial.

Under aforesaid consequences, I have also perused the testimony of PW2 Annapurna, in which she has clearly indicated that revisionist Sunny Yadav and Devvrat @ Deobrat Chaudhary have committed sexual assault with her and thus, in totality the present case is in perfect consonance by law laid-down by the Apex Court in the Case of **Hardeep Singh and others Vs. State of Punjab and others, AIR (2014) 3 SCC 92.**

The order impugned does not warrant any interference in the exercise of power under Section 397/401 Cr.P.C. Accordingly, the present criminal revision lacks merit and is **dismissed.**

While hearing the arguments, the Court has come across to Annexure No. 7 to the affidavit, an order of co-ordinate bench. On making an inquiry from the learned counsel for the revisionists, it transpires that on earlier occasion, the same set of non-accused persons (the revisionists), who were summoned in the exercise of power under Section 319 Cr.P.C., have already challenged the order impugned dated 30.11.2021 by means of Criminal Misc. 482 application having number 30330 of 2021 in re: Devvrat @ Deobrat Chaudhari & Another Vs. State of U.P. & Another. That 482 application was drafted and argued by same counsel, Sri Sushil Kumar Mishra, Advocate. Co-ordinate Bench of this Court vide order dated 07.01.2022 was pleased to pass following order:-

“Heard learned counsel for the applicants, learned Additional

Government Advocate for the State of U.P./opposite party no.1 and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicants to quash the impugned summoning order dated 30.11.2021 and further proceedings of Special Sessions Trial No. 783 of 2018 (State Vs. Monu), under Sections 363 and 376 I.P.C., Police Station-Barhalganj, District-Gorakhpur, pending in the court of Additional Sessions Judge/Special Judge, POCSO Act, Court No. 04, Gorakhpur.

At the outset learned counsel for the applicants gave up his challenge to the aforesaid impugned summoning order and impugned criminal proceedings against the applicants and confined his submission requesting to grant some protection to the applicants to surrender before the concerned court below. The learned counsel for the applicants further stated at the Bar that he is not pressing any other prayer made in this application on merits and prayed that a direction may be issued to the concerned courts below to consider and decide the bail application of the applicants expeditiously.

Learned A.G.A. for the State of U.P. submits that in case the applicants are not pressing the relief as sought for by them on merits and want to surrender before the concerned court below, he has no objection in granting protection to them for a short period.

*In view of above, considering the aforesaid alternative prayer made by learned counsel for the applicants, it is directed that the applicants shall surrender before the concerned court below within four weeks from today and in case apply for bail, the bail application of the applicants shall be disposed of expeditiously by the courts below in accordance with law and keeping in view the guidelines as laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another**, reported in **2021 SCC Online SC 922**.*

For the period of four weeks from today or till the time of surrender of the applicants before the concerned court below, whichever is earlier, they shall not be arrested in the above case.

With the above observations and directions, this application under

Section 482 Cr.P.C. is disposed of.”

Though the counsel for the applicants have confined their submissions only to the extent of seeking limited protection but the fact remains, that the prayer sought is to quash impugned summoning order dated 30.11.2021 and the further proceedings of SST No. 783 of 2018 (State Vs. Monu), under Sections 363 and 376 I.P.C. PS Barhalganj, District Gorakhpur.

Again by means of instant criminal revision, the prayer sought is to quash the impugned summoning order dated 30.11.2021, passed by Additional Sessions Judge/Special Judge (POCSO Act), Court No. 4 in SST No. 783 of 2018 (State Vs. Monu) and some subsequent order dated 11.03.2022, passed by the same learned Judge in the same proceedings.

This Court is of considered opinion that the subsequent proceedings is specifically barred by the Principles of Constructive Res Judicata and nor at all maintainable. Once the revisionsits have already approached this Court by means of proceedings under Section 482 Cr.P.C. seeking same prayer and on his own choice confined his submissions seeking limited protection of four weeks during which the revisionists were required to surrender and get themselves bailed out, but, instead of abiding by the direction of the Court vide order dated 07.01.2022, the revisionists again knocked the doors of this Court by filing the instant revision on 04.04.2022. This subsequent proceedings by way of filing the revision is nothing but coming to the Court in its second innings. This is per se a deplorable practice on the part of revisionists, an

unpardonable sin. The revisionists are trying hard to get some favourable orders from this Court by hook or by crook. Interestingly, the deponent of the affidavit in support of the revision is none other than Revisionist No. 2, who have earlier filed 482 application. This Devvrat @ Deobrat Chaudhari after changing his position in the array of party wants to hide his identity.

Such type of practices is now a days rampant in the Court of law, where unscrupulous litigant wants to extract some favourable orders by adopting any foul means. This type of malpractices could safely be termed on back-stabbing to the solemn Court proceedings, where fair play in the touch stone. The law courts are advised beware such type of unscrupulous and unethical litigant and their advising counsels and should handle them with iron hands by imposing exemplary cost upon such a litigant.

Thus, this Court while rejecting the instant revision is imposing a cost of Rs. 50,000/- (Fifty Thousand) upon the revisionists Sunny Yadav and Devvrat @ Deobrat Chaudhari.

The learned Sessions Judge, Gorakhpur is required to see that the aforesaid cost shall be recovered from aforesaid revisionists as an arrears of land revenue through Collector of Gorakhpur by 31.05.2022 positively and shall report to Registrar General, Allahabad High Court about the said recovery, failing which strict action would warrant against him.

Order Date :- 19.4.2022/AKT