

**[1]**

**RESERVED ON 02.09.2022**

**DELIVERED ON 14.09.2022**

**Court No. - 1**

**Case :-** APPLICATION U/S 482 No. - 4006 of 2021

**Applicant :-** Gayatri Prasad Prajapati

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

**Counsel for Applicant :-** Ayodhya Prasad Mishra, Rituraj Mishra, Shesh Ram Verma

**Counsel for Opposite Party :-** G.A.

**Connected with**

**Case :-** CRIMINAL REVISION No. - 620 of 2021

**Revisionist :-** Gayatri Prasad Prajapati

**Opposite Party :-** State Of U.P. And Anr.

**Counsel for Revisionist :-** Ayodhya Prasad Mishra, Rituraj Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ramesh Sinha, J.**

**(1)** The applicant, **Gayatri Prasad Prajapati**, has filed the above-captioned application No. 4006 of 2021 under Section 482 Cr.P.C., challenging the order dated 05.10.2021 passed by the Special Judge, M.P.-M.L.A./ Additional Sessions Judge, Court No. 19, Lucknow in Sessions Trial No. 864 of 2018 : *State Vs. Ashish Shukla and others* arising out of Case Crime No. 1330 of 2016, Police Station Gomti Nagar, whereby charges under Sections 354A (2) read with 120B, 364/511 read with Section 120B, 504 read with Section 120B and 506 read with 120B I.P.C. have been framed against the applicant Gayatri Prasad Prajapati.

**(2)** The Criminal Revision No. 620 of 2021 under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 has

**[2]**

been filed by the revisionist, **Gayatri Prasad Prajapati**, challenging the order dated 18.09.2021 passed by the Special Judge, M.P.-M.L.A./Additional Sessions Judge, Court No. 19, Lucknow in Sessions Trial No. 864 of 2018 : *State Vs. Ashish Shukla and others* arising out of Case Crime No. 1330 of 2016, Police Station Gomti Nagar, whereby applications for discharge (B-27) filed under Section 227 Cr.P.C. by the revisionist Gayatri Prasad Prajapati and application (B-25) under Section 227 Cr.P.C. filed by co-accused Ashish Shukla were rejected.

**(3)** Since both the above-captioned application under Section 482 Cr.P.C. and revision under Section 397 read with 401 Cr.P.C. arise out of common questions factual matrix and in relation to Sessions Trial No. 1330 of 2016 vide Case Crime No. 1330 of 2016 registered at police station Gomti Nagar, hence, with the consent of the learned Counsel for the parties, they are being taken up together and proceed to decide the same by the common order.

**(4)** The victim/respondent no.2 had filed a complaint/application dated 26.10.2016 at police station Gomti Nagar, alleging therein that she was a Ward Member of Ramghat Ward No.10, Chitrakoot. Before three years, Babloo Singh, Ashish Shukla and one unknown person contacted her (victim/ respondent no.2) by introducing themselves to be the workers of Samajwadi Party and wishes to worship Lord Rama. They

### **[3]**

requested her to assist them to visit local temples. On their request, she assisted and helped them to visit temples for one week. Thereafter, they offered her for mining lease and asked the victim to come to Lucknow as they had good relations with the Minister of Mining as well as Mining Officers and mining lease would be allotted in her favour. When the victim came to Lucknow, they stayed her at Ram Krishna Hotel and asked her to establish physical relation with them but she refused, upon which the aforesaid persons threatened her to face consequences in future. After that when she again came to Lucknow and visited Patrakarpuram Market to buy some articles, some unknown miscreants came and used abusive language against her, upon which, people gathered there and thereafter they all fled away. The victim/respondent no.2 had also alleged that unknown miscreants had also abused her and threatened to kill her and her children and also warned her not to disclose anything to anyone.

- (5)** On the basis of the aforesaid complaint of the victim/respondent no.2, an F.I.R., bearing No. 1330 of 2016, under Sections 294, 504, 506 I.P.C. was lodged at Police Station Gomti Nagar, district Lucknow East (Commissionerate Lucknow).
- (6)** During pendency of the investigation of the aforesaid F.I.R., the victim/respondent no.2 had approached the Apex Court by

**[4]**

filing Writ Petition(s) (Criminal) No(s) 160 of 2016, in which following order was passed by the Apex Court on 17.02.2017 :-

“As an interim order we direct the registration of the First Information Report (FIR) on the basis of the complaint which is submitted by the petitioner with the concerned Police Station, Lucknow (UP) with the direction to the police to investigate into the matter and submit its report in a sealed cover within seven weeks from today.

- (7) Pursuant to the aforesaid order of the Apex Court dated 17.02.2017, another F.I.R. dated 18.02.2017, bearing No. 29 of 2017, under Sections 376D, 376, 511, 504, 506 I.P.C. and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 was lodged against the revisionist/applicant Gayatri Prajapati and six others on the application/complaint of the respondent no.2/victim, alleging therein that Gayatri Prasad Prajapati and his associates Ashok Tiwari, Pintu Singh, Vikas Verma, Chanderpal, Rupesh, Ashish Shukla etc. raped her at 5, Gautampalli and also they collectively attempted to rape her minor daughter.
- (8) It appears that after registration of the aforesaid F.I.R., the revisionist/applicant Gayatri Prasad Prajapati had approached the Apex Court by filing modification applications, bearing CRLMP 3470, 3471, 3472, 3473, 3474 and 3475 of 2017 in pending Writ Petition (Criminal) No (s) 160 of 2016, in which, following order was passed by the Apex Court on 06.03.2017 :-

**[5]**

“Vide earlier order dated 17.02.2017, this Court has simply directed the registration of the First Information Report and investigation into the same. We are not inclined to modify that order.

Other proceedings, if any, may go on in accordance with law. We, however, record the statement of the learned counsel for the petitioner that one of the First Information Report projected by the applicants was never lodged by the petitioner and it is forged one. All this would be examined by the Investigating Officer. Whatever rights/remedies the parties have, they may avail the same.

Criminal Miscellaneous Petitions are disposed of.”

- (9) Thereafter, the revisionist/applicant had filed an application for discharge (B-9). During pendency of this application, revisionist/applicant had filed an application for withdrawal of the discharge application (B-9) but the trial Court declined to accept the aforesaid prayer of the revisionist/applicant and rejected the same (B-9) preferred by the revisionist/applicant vide order dated 08.10.2020.
- (10) Aggrieved by the aforesaid order dated 08.10.2020, the revisionist/applicant had approached this Court by filing Criminal Revision No. 639 of 2020 : *Gayatri Prasad Prajapati Vs. State of U.P. and another*. A Co-ordinate Bench of this Court, vide order dated 27.01.2021, disposed of the aforesaid revision of the revisionist/applicant with liberty to the revisionist to move a fresh application for discharge within a week from the date of the order and the trial Court was directed to consider and dispose of the same within a month from the date of receipt of fresh application, without granting

**[6]**

unnecessary adjournments to either of the parties and without being influenced by the order impugned in the aforesaid revision.

**(11)** Pursuant to the aforesaid order dated 27.01.2021, the revisionist/applicant had preferred fresh application for discharge (B-27) under Section 227 Cr.P.C. on 02.02.2021. Co-accused Ashish Shukla had also preferred application for discharge (B-25) under Section 227 Cr.P.C. on 05.02.2021. Both the aforesaid applications for discharge were considered by the trial Court together and vide order dated 18.09.2021, rejected the same.

**(12)** Feeling aggrieved by the order dated 18.09.2021, the revisionist-Gayatri Prasad Prajapathi has filed the Criminal Revision No. 620 of 2021.

**(13)** During pendency of the aforesaid criminal revision, the trial Court, vide order dated 05.10.2021, framed charges against the revisionist/applicant under Sections 354A (2) read with Section 120-B I.P.C., 364/511 read with Section 120-B I.P.C., 504 read with Section 120-B I.P.C. and 506 read with Section 120-B I.P.C.

**(14)** Aggrieved by the aforesaid order dated 05.10.2021, the applicant-Gayatri Prasad Prajapati preferred application No. 4006 of 2021 under Section 482 Cr.P.C. before this Court.

- (15)** Heard Shri Ayodhya Prasad Mishra, learned Counsel for the applicant/revisionist, Shri Arunendra, learned Additional Government Advocate for the State and perused the material brought on record.
- (16)** Shri Ayodhya Prasad Mishra, learned Counsel for the applicant/revisionist has argued that the revisionist/applicant was not named in the F.I.R. alleged to be lodged by the respondent no.2/victim under Sections 294/504/506 I.P.C at Police Station Gomti Nagar, District Lucknow nor there was any allegation in the F.I.R. of any kind regarding the involvement of the revisionist/applicant by the respondent no.2/victim. Furthermore, in the statement recorded under Section 164 Cr.P.C., the respondent no.2/victim has categorically stated that she had neither lodged the F.I.R. nor submitted any application/complaint in this regard before the police station Gomti Nagar, Lucknow. His submission is that the revisionist/applicant has been implicated in F.I.R. No. 1330 of 2016 only on account of political vendatta.
- (17)** Learned Counsel for the applicant/revisionist has also stated that earlier vide orders dated 29.04.2017 and 09.08.2017, the Chief Judicial Magistrate, Lucknow found the investigation of the case made by the Investigating Officer was not in accordance with law and as such, directed to conduct proper investigation after getting the signature of the victim/

**[8]**

respondent no.2 on the complaint verified from the Forensic Science Laboratory but even then the Investigating Officer, without verifying the truthfulness of the signature of the victim as per orders dated 29.04.2017 and 09.08.2017, filed charge-sheet against the revisionist/applicant. His submission is that there was no material against the revisionist/applicant to implicate him in the present case, however, the trial Court while placing reliance upon the statement of the respondent no.2/victim recorded another F.I.R. No. 29 of 2017 lodged at Police Station Gautampalli, has dismissed the application for discharge of the applicant/revisionist vide order dated 18.09.2021 and framed charges against the applicant vide order dated 05.10.2021, without considering the fact that the present case relates to the police station Gomti Nagar and the place of the incident as alleged in the F.I.R. No. 1330 of 2016 relates to Patrakarpuram. Therefore, he prays that the impugned orders passed by the trial Court are liable to be quashed.

**(18)** Per contra, learned Additional Government Advocate has opposed the prayer of the learned Counsel for the applicant/revisionist and argued that while rejecting the application for discharge of the revisionist vide order dated 18.09.2021 and framing of charges against the applicant/revisionist vide order dated 05.10.2021, the learned trial Court has minutely examined the evidence on record and found that the Investigating Officer had recorded the statement of Constable



**[9]**

Surendra, who, in his statement has specifically stated that respondent no.2/victim came to the police station and lodged the report by herself; witness Chanchal in his statement recorded under Section 161 Cr.P.C. had stated that notice of the case was served upon the respondent no.2/victim; the Manager of Ramkrishna Guest House in his statement recorded under Section 161 Cr.P.C. had supported the version of the prosecution that victim stayed at the guest house and people came there to meet her. The learned Trial Court had also found that the Investigating Officer opined that as the revisionist/applicant is the influential and powerful person, the victim refused to give her signature. In this background, the trial Court *prima facie* has rightly found the involvement of the revisionist/applicant in the case.

**(19)** Learned Additional Government Advocate has further argued that after considering all the pros and cons of the matter, the Chief Judicial Magistrate, vide order dated 08.11.2017, took cognizance of the matter and committed it to the Court of Sessions vide order dated 11.09.2018. He argued that the plea of the revisionist that as the victim herself stated that she had not filed any F.I.R. or lodged any report of the present case, therefore, the present proceedings initiated against the revisionist on the basis of F.I.R. No. 1330 of 2016 are not sustainable, can only be ascertained after recording the statement of the victim before the trial Court and at this stage, it

cannot be presumed that the victim has not filed F.I.R. No. 1330 of 2016.

**(20)** Learned AGA has also argued that in order to secure the presence of the victim for recording her statement as directed by this Court earlier on 26.11.2021, the trial Court issued bailable warrant against the victim but even then the victim/respondent no.2 did not appear. Thereafter, several dates have been fixed by the trial Court for recording the statement of the victim but even then the victim did not appear for recording her statement. Ultimately, on 01.09.2022, a non-bailable warrant has been issued against the victim and it would be quite possible that now, the statement of the victim may be recorded in near future.

**(21)** Having heard the learned Counsel for the parties and gone through the record, it transpires that the learned Counsel for the applicant/revisionist has mainly challenged the impugned orders passed by the learned Trial Court *inter alia* on the grounds that the victim herself had not supported the prosecution case as she stated in her statement under Section 164 Cr.P.C. that she had neither lodged the F.I.R. No. 1330 of 2016 nor made any complaint against the revisionist/applicant, therefore, applicant/appellant be discharged from F.I.R. No. 1330 of 2016.

**[11]**

- (22)** Learned AGA, on the other hand, pointed out that non-bailable warrant has been issued against the victim/respondent no.2 and it is quite possible that the statement of the victim may be recorded in near future.
- (23)** On due consideration, this Court is of the view that whether the victim/respondent no.2 had lodged the complaint/F.I.R. against the revisionist/applicant or not, is a moot question for disposal of the present matters.
- (24)** It has been pointed out by the learned Additional Government Advocate that on 01.09.2022, non-bailable warrant has been issued by the trial Court against victim/respondent no.2 so that she may appear before the trial Court for recording her statement. Therefore, at this stage, interest of justice would suffice, if an opportunity be provided so that the statement of the victim/respondent no.2 be recorded.
- (25)** In view of the aforesaid, the trial Court is directed to make an earnest endeavour to secure the presence of victim/respondent no.2 and record her statement, in accordance with law, expeditiously, say, within a period of three months from the date of receipt of a certified copy of this order. The trial Court is also directed that no adjournment shall be granted to either of the parties.
- (26)** Let the matter be listed after three months.

**(27)** If the statement of the victim/respondent no.3 is recorded by the trial Court before the aforesaid period, liberty is granted to the applicant/revisionist to move an appropriate application for preponement of the hearing of the case along with a certified copy of the statement of the victim/respondent no.3 before this Court so that matter would reach to its logical end.

**(28)** The Senior Registrar is directed to send a copy of this order to the Court concerned for necessary information and follow up action forthwith. Learned Counsel for the parties are also directed to furnish a certified copy of this order to the Court concerned for necessary information and follow up action.

**(Ramesh Sinha, J.)**

**Order Date :- 14<sup>th</sup> September, 2022**

Ajit/-