

Atul Kumar Singh @ Atul Rai vs State Of U.P. And Anr. on 17 December, 2019

Author: Harsh Kumar

Bench: Harsh Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 82

Case :- CRIMINAL REVISION No. - 4827 of 2019

Revisionist :- Atul Kumar Singh @ Atul Rai

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

Counsel for Revisionist :- Ajay Srivastava, Zia Naz Zaidi

Counsel for Opposite Party :- G.A.

Hon'ble Harsh Kumar, J.

Vakalatnama filed by Sri Sudhisht, Advocate on behalf of respondent no.2, is taken on record.

Heard Sri Dilip Kumar, learned Senior Advocate assisted by Sri Ajay Srivastava, learned counsel for revisionist, Sri Sudhist, learned counsel for respondent no.2, learned AGA for State and perused the record.

The instant revision has been filed against order dated 5.12.2019 passed by Special Judge M.P./M.L.A., Allahabad in S.T. No.407 of 2019 on discharge application filed by revisionist in Crime No.548 of 2019, under sections 420, 376, 504, 506 IPC.

Learned counsel for revisionist submits that revisionist has been falsely implicated in F.I.R. lodged by opposite party no.2 with absolutely false and incorrect allegations; that Investigating Officer without proper investigation has submitted charge sheet under sections 420, 376, 504 and 506 IPC though no offence under above sections is made out against revisionist; that there is no evidence on record about publishing or transmitting of any material containing sexually explicit act or conduct

in electronic form, so no offence even under section 67A of Information Technology Act, 2000 is made out against applicant; that charge sheet has also not been submitted for offence under section 67A of Information Technology Act; that revisionist moved an application 30B for discharging him of the offences under sections 420, 376, 504, 506 IPC (in which charge sheet was submitted) but the learned Trial Court has acted wrongly and illegally in not only rejecting discharge application 30B, but also in observing that apart sections 420, 376, 504 and 506 IPC charge will also be framed under section 67A of Information Technology Act, 2000 against revisionist-accused. He further submitted that the Trial Court has also framed charges against revisionist under above sections.

Per contra, learned AGA and learned counsel for respondent no.2 supported the impugned order of rejecting discharge application 30B and learned counsel for respondent no.2 submitted that accused is delaying the disposal of trial; that the charges have been framed in sessions trial upon direction of this Court passed on 5.11.2019 in Criminal Misc. Bail Application No.40122 of 2019 of applicant; that as per Annexure No.3 page 39 and 40, obscene messages were sent by revisionist-accused to respondent no.2 stating that he will transmit them, which is sufficient for making an offence under section 67A of Information Technology Act, 2000.

Upon hearing parties' counsel and perusal of record, I find that undisputedly on the F.I.R. lodged by opposite party no.2 upon investigation charge sheet was filed by Investigating Officer against revisionist under sections 420, 376, 504 and 506 IPC. Before framing of charges accused-revisionist moved an application 30B seeking his discharge from above offences under sections 420, 376, 504 and 506 IPC.

It is settled principles of law that at the time of disposal of discharge application, the Court may not consider any defence evidence, which can be considered only at the time of final disposal of trial when after conclusion of prosecution evidence and recording of statement of accused under section 313 Cr.P.C., accused may produce defence evidence on discharge application. Learned Trial Court has passed detailed order after discussing the material on record and at this stage, there is no sufficient ground to hold that no offence under sections 420, 376, 504 and 506 IPC is made out against revisionist and no sufficient ground for discharging him. As far as offence under section 67A of Information Technology Act, 2000 is concerned, neither any charge sheet has been filed under above section nor discharge was sought under section 67A of Information Technology Act. In the impugned order in last line, the Special Judge has observed that accused will be charged for committing offence under sections 420, 376, 504 and 506 IPC and section 67A of Information Technology Act, 2000. The above observation though appears unwarranted, but it is not an order, framing charge under section 67A of Information Technology Act and no revision lies against such observation. The revision has been filed only against order rejecting discharge application refusing to discharge accused-revisionist from offences under sections 420, 376, 504 and 506 IPC. No revision is alleged to have been filed against any order framing charge under section 67A of Information Technology Act.

In view of discussions made above, I find that learned counsel for revisionist has failed to show any illegality, irregularity, incorrectness or impropriety in the impugned order rejecting his discharge application 30B under sections 420, 376, 504 and 506 IPC and there is no sufficient ground for

interfering with or setting it aside the impugned order.

The revision is disposed off accordingly.

Order Date :- 17.12.2019 Tamang