

Court No. - 70

Case :- CRIMINAL REVISION No. - 1617 of 2019

Revisionist :- Shishupal And 2 Ors.

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

Counsel for Revisionist :- Rajesh K.S. Chaudhary, Akank Kumar Jain

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

Heard learned counsel for the revisionists and learned Additional Government Advocate for the State/opposite party no.1 and perused the record with the assistance of learned counsel for the parties.

This revision under Section 397/401 Cr.P.C. has been filed by the revisionists with a prayer to set aside the judgment and order dated 28.02.2019 passed by learned Additional Chief Judicial Magistrate, Court No.8, Aligarh in Case No. 1240 of 2017 arising out of Case Crime No. 105 of 2017, under Sections 447, 504 and 4/5 Prevention of Damages to Public Property Act, Police Station Gangiri, District Aligarh.

Filtering out unnecessary details, brief facts of the case is that on 14.05.2017 FIR was lodged by the opposite party no.2 against the applicants and one co-accused Ram Singh registered as Case Crime No. 105 of 2017, under Sections 447, 504, 4/5 Prevention of Damages to Public Property Act, Police Station Gangiri, District Aligarh making allegation that the land in question bearing plot no. 443 area 311 is Abadi land. As per the revenue record same has been registered as public road (chak road), which has been illegally encroached by the applicants by getting the brick wall constructed on the public road (chak road). The Investigating Officer after investigation submitted charge-sheet dated 25.5.2017 against the revisionists under Section 447, 504 IPC and 4/5 Prevention of Damages to Public Property Act. The said charge-sheet dated 25.5.2017 was challenged by the applicants by filing Application under Section 482 Cr.P.C. No. 32743 of 2017 before this Court but the prayer for quashing the charge-sheet dated 25.5.2017 was refused and application was disposed of vide order dated 6.11.2017 with the direction that in case applicants move an application for discharge through counsel within two weeks, the same shall be disposed of by the trial court by a reasoned and speaking order in accordance with law.

Pursuant to order dated 6.11.2017, the applicants moved discharge application dated 20.11.2017, which has been rejected by the Magistrate concerned vide order dated 28.2.2019, which is under challenge in the present revision.

It is submitted by the learned counsel for the revisionists that

the dispute in the present case is of civil nature, therefore, criminal proceedings is not maintainable. He further submitted that the land/property in dispute is not a public property because it belongs to Gram Sabha, therefore, the offence under Section 4/5 Prevention of Damages to Public Property Act is not made out against the revisionists. It is next submitted that alternative remedy is available to the government to initiate the proceedings under Section 122B of U.P.Z.A. and L.R. Act. It is further submitted that the court below has wrongly and illegally rejected the discharge application of the revisionists and plea taken by the revisionists in his defence has not been taken into consideration, therefore, the impugned order dated 28.2.2019 is not sustainable and is liable to be set aside by this Court.

Per contra, learned Additional Government Advocate for the State/opposite party no.1 submitted that there is no illegality in the impugned order dated 28.02.2019. It is next submitted that it is settled law that at the stage of discharge, the court below is required to see whether on uncontroverted allegations made in the prosecution case and the evidence relied in support of same discloses the commission of any offence against the accused or not. The disputed questions of facts and defence of the accused cannot be taken into consideration at the pre-trial stage. Considering the allegations and material evidence on record, the prima facie offence against the accused/revisionists is made out, therefore, the revision is liable to be dismissed.

I have gone through the entire record including the impugned order.

Having regard to the facts and circumstances of the case and considering the submissions advanced by the learned counsel for the parties, I find that it is admitted by the revisionists that they are neither owner of land in dispute (plot no. 433) nor their name have been recorded in the revenue record. It is also not disputed that the land in dispute, which has been encroached by the revisionists belongs to government land situated in Village Jaraith of gram Panchayat Najawa, District Aligarh and was being used as public road, hence revisionists have no legal right or title on the same. I also find that the earlier charge-sheet dated 25.5.2017 filed against the revisionists was challenged by revisionists but the said prayer was refused by this Court vide order dated 6.11.2017. The Apex Court in case of

P.Swaroop Rani v. M.Hari Narayan @ Hari Babu (2008) 3 SCC (Crl) 19 has held that criminal as well as civil proceedings can proceed simultaneously and there is no such bar whatsoever that merely because a case seems to be civil as well as criminal nature then the criminal proceedings will not be done. The Apex Court in case of **Trisuns Chemical Industry v. Rajesh Agarwal & others (1997) 8 SCC 686**, has held that criminal proceedings cannot be thwarted merely because civil proceedings are also maintainable.

Since, the property in question is the property of Gram Sabha and the same is for public purpose, therefore, the same is public property and the prima facie offence under Section 4/5 of Prevention of Damage to Public Property Act is made out against the revisionists. It is admitted facts on record that the revisionists have encroached the property of Gram Sabha, for which they have no legal right and title. The revisionists have obstructed the public road by getting the brick wall constructed for the public road, therefore, committed an offence of criminal trespass also. As per prosecution case, on restraining the revisionists to commit the offence of criminal trespass, they have insulted the informant by abusing and threatened etc., therefore, prima facie offence under Section 504 IPC is also made out against the revisionists.

In view of above, no case is made out to interfere with the impugned order dated 28.02.2019. There is no illegality or infirmity in the impugned order. The court concerned while passing the impugned order has considered the relevant materials on record and decided the discharge application of the revisionists in the light of well settled principle of law.

The revisionists have a remedy under the law to raise all such plea in their defence before the concerned court below at appropriate stage. Hence, the prayer made in the revision is **refused**.

The revision lacks merit and is, accordingly, dismissed.

Order Date :- 19.4.2019/AK Pandey