

**Karan Singh and Others Vs. State of U.P. and Another**

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**Court : Allahabad**

**Decided On : Nov-26-2010**

**Judge : Ashok Srivastava, J.**

**Appeal No. : CRIMINAL REVISION No. - 2501 of 2005**

**Appellant : Karan Singh and Others**

**Respondent : State of U.P. and Another**

**Advocate for Def. : Govt. Advocate; D.K.Srivastava, Advs**

**Advocate for Pet/Ap. : V.P. Srivastava; D.B. Mishra; H.C. Mishra, Advs**

**Judgement :**

1. This criminal revision has been filed by the revisionists against the judgment and order dated 2.5.2005 passed by the learned Sessions Judge, Meerut in Criminal Revision No.546 of 2004, Assey v. State of U.P.

2. The brief facts of the case are that an application under Section 156(3)Cr. P.C. was moved before the learned Judicial Magistrate, Mawana, Meerut against the revisionists of this revision on 26.10.2004 by opposite party no.2, Assey. According to the applicant of the above application various offences under Sections 465, 467, 468, 469, 471 & 120-B, IPC have been committed by the revisionists. It has further been alleged in the said application that when opposite party no.2 had failed to lodge an F.I.R. in the case he approached the Court of

learned Judicial Magistrate with the said application. After hearing the applicant the learned Judicial Magistrate was of the view that there was no substance in the application moved before him and therefore, he rejected it on 8.11.2004.

3. Feeling aggrieved by the said order of rejection opposite party no.2 moved the Court of the learned Sessions Judge, Meerut. His revision was registered there as Criminal Revision No.546 of 2004. The opposite party of the said revision was only the State of U.P. After hearing the revisionists and the State, the learned Sessions Judge allowed the revision, set aside the order passed by the learned Judicial Magistrate, Mawana on 8.11.2004 and remanded back the matter to his Court for fresh consideration and disposal of the application under Section 156(3) Cr.P.C., keeping in view the guidelines given by him in the body of the judgment.

4. Feeling aggrieved by the said judgment the revisionists have filed this revision.

5. I have heard learned counsel for the revisionists, learned counsel for opposite party no.2 and the learned A.G.A. Both the opposite parties have opposed vehemently this revision.

6. My attention has been drawn by the learned counsel for the revisionists towards the case reported in 2009 (65) ACC 629 SC, Raghu Raj Singh Rousha v. M/S Shivam Sundaram Promoters (P) Ltd. & another.

7. It has been argued by the learned counsel for the revisionists that the revisionists were not made party to the revision filed by opposite party no.2 before the learned Sessions Judge, Meerut. To prove this contention fact-wise annexure-2 to the affidavit attached with the memo of revision has been filed. Annexure-2 is the copy of the memo of revision filed by opposite party no.2 before the learned Sessions Judge on 16/17.11.2004. From perusal of this annexure, it is evident that only State of U.P. is there as the sole opposite party. It is also evident that none of the revisionists was arrayed as opposite party in the said revision. Naturally they were not heard by the learned Sessions Judge nor there was any opportunity for them to oppose the said revision. It has been argued from the side of the revisionists that since it is undisputed that the revisionists were not party to the revision before the learned Sessions Judge therefore, there has been a violation of

statutory provisions as contained in Sub-section 2 of Section 401 Cr.P.C. Sub-section 2 of Section 401 Cr.P.C. is as follows:

**"No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence."**

8. Stressing his arguments on this point Mr.V.P.Srivastava, learned counsel for the revisionists has stated that in this Sub-section the words "other person" appear alongwith the word "accused" which indicates that all those persons have got a right to be heard, if there is a possibility that an order may be passed in the revision which may prejudice his/their interest. He has further contended that Sub-section 2 is not confined to the accused only and the legislature has made it mandatory that no order under Section 401 Cr.P.C. shall be passed to the prejudice of any person unless that person has been given an opportunity of being heard either personally or by pleader in his defence.

9. Mr.V.P.Srivastava has further contended that from the perusal of annexure-2 it is evident that revisionists were not impleaded as opposite party to the revision, which was heard and disposed of to the prejudice of the revisionists. He pointed out the ratio contained in Raghu Raj Singh Rousha's case (supra). He has further given a reference to para 18 of the said judgment and has stressed that fact-wise the case in hand is similar to the case of Raghu Raj Singh Rousha(supra).

10. This contention of the learned counsel for the revisionists has been opposed by the learned counsel for opposite party no.2 and the learned A.G.A.

11. Learned counsel for the State submits that by the impugned order the revisionists were not prejudice and in any event at that stage they were not accused in the case and they were only prospective accused and therefore Sub-section 2 of Section 401 Cr.P.C. can not help them. It has further been submitted from the side of opposite party no.2 that the learned Magistrate had not taken cognizance of the case nor the accused were summoned. Therefore no such right had accrued to them in the revision which has been given by the statute in the said

sub-section. The contention of the opposite party is not tenable, keeping in view the facts and position of law as given in para 18 of Raghu Raj Singh Rousha's case (supra). In para 18 of the said case the Apex Court has held that since the Magistrate had refused his jurisdiction under Section 156 (3) Cr.P.C. and had rejected the said application, it by itself shows that the Magistrate had taken cognizance because he arrived at a conclusion keeping in view the facts of the case pending before him.

12. In the case in hand the learned Magistrate passed a detailed order on the application moved before him under Section 156(3) Cr.P.C. and thereafter he had rejected the same. Keeping in view the ratio as contained in para 18 of Raghu Raj Singh Rousha's case (supra) it can also be said in the instant case that the learned Magistrate had taken cognizance of the case while rejecting the said application. Moreso, the words "other person" alongwith the word "accused" as appearing in sub-section (2) is indicative of the position of law that this sub-section also safeguards the interest of other persons, who are not accused in the case. Therefore, the ratio as contained in Raghu Raj Singh Rousha's case (supra) is squarely applicable in the instant case. On the cost of repetition it should be mentioned here that the revisionists were not impleaded as opposite party in the revision before the learned Sessions Judge.

14. On the basis of the above discussions, I am of the view that the revision has got force and should be allowed, but it is a case in which the matter needs a remand as has been done by the Apex Court in Raghu Raj Singh Rousha's case (supra).

15. The revision is allowed. The judgment and order passed by the learned Sessions Judge, Meerut on 2.5.05 in Criminal Revision No.546 of 2004 (Assey v. State of U.P.) is quashed and set aside. The matter is remanded back to the learned Sessions Judge, Meerut, who will direct the revisionist before him (opposite party no.2 herein) to implead all the revisionists of this case as opposite parties. The learned Sessions Judge shall dispose of the matter either by himself or transfer it to some other Court of competent jurisdiction. The learned lower revisional Court shall hear the revision expeditiously and pass appropriate order in

accordance with law after hearing opposite party no.2, the State and all the revisionists herein.

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