

Court No. - 29

Case :- CRIMINAL REVISION No. - 318 of 2024

Revisionist :- Manbodh @ Manoj And 2 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Sectt.
Lko And Another

Counsel for Revisionist :- Ashutosh Shukla, Praveen Tripathi

Counsel for Opposite Party :- G.A., Vijay Kumar Tiwari

Hon'ble Subhash Vidyarthi J.

(I.A. No.2 of 2024- Delay Condonation Application)

(I.A. No.3 of 2024- Recall Application)

1. This is an application for condonation of delay in filing an application for recall of the order dated 29.03.2024 which has been filed by the opposite party No. 2 - informant on the ground that the revision has been allowed without issuing notice to her and she was not aware about passing of the order dated 29.03.2024 due to which a delay has occurred in filing the application for recall of the order. Recall of the order dated 29.03.2024 has been prayed on the ground that this order has been passed without giving an opportunity to her to oppose the revision.
2. On 04.06.2024, the learned Counsel for the revisionists had prayed for and was granted three weeks' time for filing objections against the applications but no objections have been filed till date, indicating that the revisionist does not dispute the averments made in the applications and the affidavits filed in support thereof.
3. Section 410(2) Cr.P.C. provides as follows: -

“(2) 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.”
4. Apparently, it was mandatory for this Court to have given an opportunity of hearing to the informant and the order dated 29.03.2024 whereby the revision has been allowed without issuing

notice to the opposite party No. 2, is not sustainable in law for this reason. Accordingly, both the applications are **allowed**. The delay in filing the recall application is condoned and the order dated 29.03.2024 is recalled and the revision is being decided afresh.

5. By means of the instant criminal revision filed under Section 397/401 Cr.P.C, the revisionists have assailed the validity of the judgment and order dated 18.03.2024 passed by the Additional Session Judge/F.T.C-I, District Gonda in Criminal Appeal No. 07/2023 (Manbodh alias Manoj and others Vs. State of U.P. and another) as well as the order dated 08.12.2022 passed by the Civil Judge (J.D.)/F.T.C I Gonda in Case No. 180560 of 2018, in Case Crime No. 45/2018 under Sections 498-A, 323, 504, 506 I.P.C and 3/4 of D.P. Act, P.S Wazirganj, District Gonda, whereby the revisionists were convicted and sentenced to 1 year simple imprisonment and fine of Rs. 5,000/- under Section 498-A, six months simple imprisonment under Section 323 I.P.C, six months of simple imprisonment under Section 504 I.P.C and six months simple imprisonment and fine of Rs. 5,000/- under Section 4 of D.P. Act.
6. The learned counsel for the revisionists confined his submission to the extent that the trial Court has convicted and sentenced all the accused persons for offences under Sections 498-A, 323, 504 I.P.C and Section 4 of Dowry Prohibition Act. However, the benefit of Probation of Offenders Act, 1958 has been granted to co-accused Shiv Pyari but the same has been denied to the revisionists without assigning any cogent reason. The learned counsel for the revisionists has further submitted that the revisionists are also first offenders, they have no criminal history and they have been implicated in the present case because of a matrimonial dispute and proceedings for divorce are already pending.
7. The learned counsel for the opposite party No. 2 has submitted that a Criminal Revision cannot be allowed without summoning the trial Court's record as per the statutory provision contained in Section 397 Cr.P.C. He has further submitted that the record can only be

summoned after admission of the revision and the revision has to be heard finally after receipt of the record.

8. The learned counsel for the opposite party No.2 has further submitted that the conduct of the revisionists did not warrant exercise of discretion by this Court in their favour by granting the benefit of Probation of Offenders Act, 1958 to them as the revisionists had ill-treated the informant and had neither provided due respect to her nor has the informant been provided any financial support, although a suit for divorce between the informant and the revisionist No. 1 is said to be pending.
9. Section 397 Cr.P.C. provides as follows: -

“397. Calling for records to exercise of powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of Section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

(Emphasis added)

10. Section 397 Cr.P.C. empowers the High Court to call for and examine the record of any proceeding before any inferior Criminal Court to arrive at a satisfaction as to the correctness, legality or propriety of

any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court.

11. The plain and simple meaning of the words used in Section 397 Cr.P.C. indicates that the High Court has discretion to call for the record of any proceeding, if it is necessary to arrive at a satisfaction as to the correctness, legality or propriety of any finding, sentence or order.
12. Although the revisionists have challenged the order of conviction, the learned counsel for the revisionists had confined his submission to the extent that the trial Court had declined the benefit of the Probation of Offenders Act, 1958 to revisionists whereas the same benefit was granted to a co-accused Shiv Pyari.
13. Where the correctness, legality or propriety of any finding or sentence is not under challenge and the only challenge is to the differential treatment between co-accused persons in the matter of granting benefit of the Probation of Offenders Act without assigning any cogent reason, which is apparent from a bare perusal of the impugned order itself, there is no requirement of calling for the trial Court's record.
14. The learned Counsel for the opposite party No. 2 did not dispute the facts that the revisionists are first offenders having no criminal history and that all the accused persons have been held guilty of the same set of offences. He merely submitted that while considering the request for grant of benefit of the Probation of Offenders Act, this Court has to keep in mind the conduct of the revisionists, who had ill-treated the opposite party No.2 in her matrimonial home and they are not providing any monetary support to her.
15. Before dealing with this submission, it would be appropriate to have a look at Section 4(1) of the Probation of Offenders Act, 1958 which provides as follows: -

“4. Power of court to release certain offenders on probation of good conduct.—(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment

for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.”

16. Section 4(1) of the Probation of Offenders Act, 1958 comes into play only when a person has been held guilty of committing an offence. The fact that the revisionists have been found guilty of committing the offences under Sections 498-A, 323, 504 I.P.C. and Section 4 of the Dowry Prohibition Act, has given rise to an occasion for claiming the benefit of Section 4(1) of the Probation of Offenders Act, 1958. This fact cannot be a ground for denying the benefit of Section 4(1) of the Probation of Offenders Act, 1958 to the revisionists.
17. The submission made by the learned counsel for the opposite party No. 2 that the revisionists have not provided any maintenance or monetary support to the informant, is the subject matter of matrimonial proceedings between the revisionist No. 1 and the opposite party No. 2 and it does not make out a ground for denying the benefit of Section 4(1) of the Probation of Offenders Act, 1958 to the revisionists.
18. The trial Court has merely stated that the co-accused Shiv Pyari is granted the benefit of Section 4(1) of the Probation of Offenders Act, 1958 and keeping in view the nature of the offence, the revisionists are not entitled to the same benefit. When all the accused persons have been found guilty of committing the same offences, granting benefit of Section 4(1) of the Probation of Offenders Act, 1958 to one of them

and denying the same benefit to the revisionists “keeping in view the nature of the offence” appears to be unreasonable.

19. As the aforesaid unreasonableness in the impugned order is apparent on the face of the impugned order itself, it does not need examination of the entire record of the trial Court. Therefore, this revision is being decided without calling for the record of the trial Court.
20. In view of the aforesaid facts, this Court is of the considered view that the Trial Court’s order dated 08.12.2022 to the extent that it denies the benefit of Probation of Offenders Act, 1958 to the revisionists, is unsustainable in law. The other findings recorded in the impugned order have not been challenged.
21. Accordingly, the revision is *allowed* in part. The judgment and order dated 08.12.2022, passed by the learned Civil Judge (J.D.)/F.T.C. - I Gonda in Case No.180560 of 2018 arising out of Case Crime No.45 of 2018 under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Wazirganj, District Gonda is modified to the extent it denies the benefit of Section 4(1) of Probation of Offenders Act, 1958 to the revisionists and it is provided that in case the revisionists appear before the trial Court and furnish personal bonds and two sureties for their appearance to receive sentence of one year as and when called upon and in the meantime to keep the peace and be of good behavior, the Court shall release them on probation of good conduct. The revisionists shall pay the amount of fine imposed by the trial Court.
22. In case the revisionists fail to observe the aforesaid condition of furnishing a personal bond and two sureties, the benefit of this order shall not be available to them.

(Subhash Vidyarthi J.)

Order Date: 13.11.2024
Amit K-