

Court No. - 22

Case :- CRIMINAL MISC. WRIT PETITION No. - 20954 of 2013

Petitioner :- Smt. Anju & 6 Others

Respondent :- State Of U.P. & Another

Counsel for Petitioner :- Sunil Vashisth

Counsel for Respondent :- Govt. Advocate

Hon'ble Vijay Prakash Pathak,J.

Heard learned counsel for the petitioners as well as learned AGA for the State and perused the record.

The present petition has been filed with the prayer to quash the order dated 20.09.2013 passed by the Sessions Judge, Ghaziabad dismissing Criminal Revision No.35 of 2013 as not maintenance, arising out of order dated 07.01.2013 passed by the Judicial Magistrate, Hapur, Ghaziabad in Criminal Case No.389 of 2012, under Sections 406, 504, 506 IPC rejecting the discharge application moved by the petitioners under Section 245(2) Cr.P.C.

The brief facts of the case are that the petitioners had challenged the proceedings of Complaint Case No.389 of 2012 before this Court by filing an application under Section 482 Cr.P.C. No.35651 of 2012 which was disposed of finally by this Court vide order dated 16.10.2012 directing that in case the applicants move an application under Section 245 (2) Cr.P.C. before the Court concerned through their counsel within 30 days, the same shall be heard and disposed of expeditiously in accordance with the provisions of law. It appears that in pursuance of the said order dated 16.10.2012 passed by this Court, the petitioners moved an application under Section 245(2) Cr.P.C. before the Magistrate concerned for discharge which has been dismissed vide order dated 07.01.2013 against which Criminal Revision No.35 of 2013 was filed by the petitioners which has also been dismissed by the learned lower revisional court vide order dated 20.09.2013 on the ground that the revision was not maintainable being filed against the order on discharge application moved by the accused under Section 245(2) Cr.P.C.

Learned counsel for the petitioners has mainly contended that the order passed by the learned lower revisional court is bad in law as the revision filed by the petitioners was dismissed on the ground that the revision was not maintainable whereas against the order passed on discharge application, the revision was very well maintainable. He has relied upon the judgment passed by the

Hon'ble Apex Court given in *Municipal Corporation of Delhi Vs. Girdharilal Sapuru and others reported in AIR 1981 Supreme Court 1169* and order dated 27.08.2012 passed by this Court in Criminal Misc. Writ Petition No.11721 of 2012.

On the other hand, learned AGA supported the order passed by the Court below.

I have considered the said arguments and perused the orders impugned along with all other materials available on record.

Learned lower revisional court while passing the order impugned dated 20.09.2013 has held that the revision against not discharging the accused under Section 245(2) Cr.P.C. is not maintainable and, accordingly, the revision has been dismissed.

The Hon'ble Apex Court in the aforesaid verdict *Municipal Corporation of Delhi Vs. Girdharilas Sapuru and others (Supra)* has held that the discharge order terminates the proceeding and, therefore, it is revisable under Section 397 (1) Cr.P.C. This Court while passing the order in Criminal Misc. Writ Petition No.11721 of 2012 (*Supra*) has held that an order refusing discharge is not an interlocutory order, inasmuch as if the said application is allowed, it would terminate the proceedings, therefore, the revision against the said order would be maintainable.

In view of the aforesaid decisions, the revision against dismissing the discharge application was very well maintainable before the learned lower revisional court and as such, the order passed by the learned lower revisional court is not sustainable in law.

Accordingly, this petition is partly allowed and the order dated 20.09.2013 passed by the learned lower revisional court is hereby set aside and the matter is sent back to the learned lower revisional court to decide Criminal Revision No.35 of 2013 afresh in accordance with law on merits after giving opportunity of hearing to both the parties.

Order Date :- 2.12.2013

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