

Court No. - 49

WWW.LIVELAW.IN

Case :- CRIMINAL REVISION No. - 2618 of 2019

Revisionist :- Sanjiv Gupta

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

Counsel for Revisionist :- Sanjiv Gupta (In Person),Jitendra Singh,Kirti Singh

Counsel for Opposite Party :- G.A.,Nitin Gupta

Hon'ble Vivek Agarwal,J.

Sri Sanjiv Gupta in person on Criminal Misc. Application No. 28 of 2021 in Criminal Revision No. 2618 of 2019. Sri Nitin Gupta, learned counsel for private respondent.

Order will be dictated in separate ordersheets in the chamber.

In terms of the order of Hon'ble Supreme Court dated 01.07.2021, this Criminal Revision is listed for hearing on its own merits on 24.09.2021.

Order Date :- 24.8.2021

Vikram/-

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Hon'ble Vivek Agarwal, J.

1. Sri Sanjiv Gupta in person on Criminal Misc. Application No. 28 of 2021 in Criminal Revision No. 2618 of 2019. Sri Gambhir Singh, learned AGA for the State and Sri Nitin Gupta, learned counsel for private respondent.

2. This Criminal Misc. Application in pending Criminal Revision No. 2618 of 2019 has been filed seeking a relief that *"In view of above, as per proven facts the applicant prays for sending the case to the Supreme Court of India for appropriate action to another jurisdiction of competent High Court for adjudicating as per well established process of law."*

3. Before advertent to the facts of this application, it is necessary to point out that pending criminal revision has been filed challenging order dated 30.05.2019, passed by learned Sessions Judge, Ghaziabad in Criminal Appeal No. 129 of 2018, (Sanjiv Gupta vs. State of U.P. and Another) whereby learned Sessions Judge has reduced the punishment awarded by the learned trial court in Criminal Case No. 75 of 2016 in Case Crime No. 331 of 2013, State of U.P. vs. Sanjiv Gupta, which vide judgment dated 12.09.2018, convicted the applicant under Sections 498-A, 323, 377 IPC and Section 4 of Dowry Prohibition Act respectively for two years rigorous imprisonment and fine of Rs. 3,000/-, five years rigorous imprisonment and fine of Rs. 20,000/- and simple imprisonment for a period of six months, fine of Rs. 500/- and one year rigorous imprisonment with fine of Rs. 1,500/- respectively and ordered for default, sentence of 2 days, 6 days, 15 days and 1 month respectively. Learned Appellate Court confirmed the conviction under Sections 498-A, 323, 377 IPC whereas exonerated the appellant from conviction under Section 4 of Dowry Prohibition Act. The Appellate Court further reduced the sentence of 5 years under Section 377 IPC to 4 years, maintaining the fine amount.

4. In place of arguing this criminal revision on its own merits, for which, there are directions of the Hon'ble Supreme Court vide order dated 01.07.2021 passed in Misc. Application No. 772 of 2021 in Diary no. 10019 of 2021, Sanjiv Gupta vs. State of U.P., applicant insisted on hearing Criminal Misc. Application though learned AGA as well as learned counsel for opposite party apprised him that such relief of referring the matter to Supreme Court is beyond the authority of this High Court.

5. Though, several arguments have been putforth including wastage of his precious life due to criminal prosecution on false and frivolous grounds requiring him to undergo 130 days incarceration in prison and also a fact that there have been several lapses on the part of not only the courts of first instance and the appellate court, but also on the part of this High Court. It is pointed out that First Appeal No. 296 of 2018 was reserved for orders on 06.02.2020 (wrongly mentioned as 06.02.2020 which should be 06.02.2019), judgment was delivered on 30.05.2019, but this order dated 30.05.2019 makes a mention of judgment delivered by High Court on 24.05.2019. Similarly, other lapses have been pointed out and it is mainly argued that his case was listed before the High Court in November 2020, when pandemic was at its peak and all the cause lists were suspended, parties were not allowed to appear in person and that has caused lot of prejudice to him in the matter.

6. However, the fact of the matter is that this court expressed and asked Sri Sanjiv Gupta, appreciating his predicament, especially, when he appears in person, to argue his criminal revision on its own merits on 02.09.2021, but he refused to accept this preposition and submits that if any adverse order is passed against him on his Criminal Misc. Application No. 28 of 2021, then his fundamental rights as well as rights enshrined under principle of natural justice requires that the court should allow him a reasonable window to approach the superior court assailing the order likely to be passed in Criminal Misc. Application No. 28 of 2021.

7. Sri Nitin Gupta, learned counsel for opposite party submits that this application is not maintainable. High Court has no jurisdiction either under Constitution or under any other law to refer a matter to the Hon'ble Supreme Court, inasmuch as, it is always the prerogative of the superior Constitutional court to refer a matter to a lower court in hierarchy and therefore, whatever may be the merits or the demerits of the submission made by Sri Sanjiv Gupta, no relief in the nature and style of prayer can be granted to him. He also denies various allegations made in the application and submits that Sri Sanjiv Gupta

appears to be a prisoner of his own ideology and is not cooperating with the court in disposal of criminal revision on its own merits.

8. Learned AGA supports Sri Nitin Gupta and submits that he is ready to argue this matter on its own merits.

9. After hearing revisionist in person and learned counsel for opposite parties, I am in agreement that there is no provision to refer any of the issues raised by the revisionist in person to the Hon'ble Supreme Court either for its guidance or for any kind of indulgence and further prima facie no prejudice has been caused to him till now, therefore, Criminal Misc. Application is dismissed.

10. List this case on **24.09.2021** for argument on merits of the criminal revision, as it is informed that record is already available, revisionist may advance his arguments on merits of his revision on 24.09.2021, without fail.

Order Date :- 24.8.2021

Vikram/-