

**Reserved on 18.05.2022**

**Delivered on 06.06.2022**

**Court No. - 51**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 718 of 2006

**Petitioner :-** Jagveer

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

**Counsel for Petitioner :-** Sumit Goyal

**Counsel for Respondent :-** Govt. Advocate, Mohd. Aslam Ansari

**Hon'ble Raj Beer Singh,J.**

1. Heard Sri Deepak Singh, Advocate holding brief of Sri Sumit Goyal, learned counsel for the petitioner and learned AGA for the State and perused the record. None has appeared on behalf of opposite party nos. 2.

2. This petition under Article 227 of Constitution of India has been preferred against the order dated 09.12.2005, passed by C.J.M., Saharanpur in criminal case no. 5664/2005 (State vs Ishwar & Others), under Section 147, 323, 324, 325, 308, 504 and 506 IPC, P.S. Gangoh, District Saharanpur, as well as against the order dated 24.12.2005, passed by the Court of Sessions Judge, Saharanpur in Misc. case no.284 of 2005 (Ishwar vs. State), pertaining to above stated case.

3. Perusal of record shows that the respondent no.2 has lodged first information report under Section 147, 323, 324, 504 and 506 IPC against petitioner and co-accused and that during investigation section 308 I.P.C. was also added. After investigation, police have submitted charge-sheet for the offences under Section 147, 323, 324, 325, 308, 504, 506 IPC in the court of C.J.M., Saharanpur and accordingly cognizance was taken. The accused persons moved an application alleging no case under Section 308 I.P.C. is made out, hence cognizance under section 308 I.P.C. be withdrawn. Said application was rejected vide impugned order dated 09.12.2005 passed by the C.J.M. Saharanpur. Against the order dated 09.12.2005, the accused persons have preferred a criminal revision, which was decided by the Sessions Judge, Saharanpur vide dated 24.12.2005 and the revision was dismissed.

4. It has been argued by learned counsel for the petitioner that the first information report was lodged for offences under Section 147, 323, 324, 504, 506 IPC and during investigation section 308 IPC was added. Later on the direction of Circle Officer, police have conducted further investigation and thereafter a supplementary report was preferred for offences under Section 147, 323, 324, 504 and 506 IPC with conclusion that none of the injury of injured was dangerous to life but despite that the C.J.M. Saharanpur has taken cognizance under Section 308 IPC, besides the other sections of IPC. The order passed by C.J.M. Saharanpur is thoroughly illegal and arbitrary and that in view of injury report of injured, no case under Section 308 IPC is made out. Learned counsel has referred injury report of injured Charan Singh and submitted that injury sustained by him is not dangerous to life. It has further been submitted that the revisional court also did not consider the matter in correct perspective and committed error by rejecting the revision filed by the petitioner and thus, both the impugned orders are liable to be set aside.

5. Learned AGA for State has submitted that there is no illegality or perversity in the impugned orders. As the charge-sheet was submitted for offences under Section 147, 323, 324, 325, 504, 506, 308 IPC and cognizance was taken and thus, that court was not competent to review its own order. Further, the petitioner has not placed the certified copy of injury report on record. However, it appears that injured has sustained several fractures and other injuries at vital parts of his body and that it cannot be said that Section 308 IPC is not made out. It was also stated that it is a session triable case and thus, the Magistrate is not competent to drop any section and that petitioner may raise his grievances before the court of Sessions at the stage of charge. Learned AGA submits that there is no illegality or perversity in the impugned orders.

6. It is well settled that scope of judicial review in such matters where the orders of Courts below are assailed before this Court in a writ petition under Article 226/227 of the Constitution is very limited. This power

involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. The power under article 227 of the Constitution does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. In *D. N. Banerji Vs. P. R. Mukherjee* 1953 SC 58 the Apex Court held:

*"Unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under articles 226 and 227 of the Constitution to interfere."*

7. A Constitution Bench of the Hon'ble Apex Court examined the scope of [Article 227](#) of the Constitution in *Waryam Singh and another Vs. Amarnath and another* AIR 1954 SC 215 and observed that the power of superintendence conferred by [Article 227](#) is to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. Similarly in case *Mohd. Yunus v. Mohd. Mustaqim and Ors.* AIR 1984 SC 38 the Apex Court held that this Court has very limited scope under [Article 227](#) of the Constitution and even the errors of law cannot be corrected in exercise of power of judicial review under [Article 227](#) of the Constitution. The power can be used sparingly when it comes to the conclusion that the Authority/Tribunal has exceeded its jurisdiction or proceeded under erroneous presumption of jurisdiction. The High Court cannot assume unlimited prerogative to correct all species of hardship or wrong decision. For interference, there must be a case of flagrant abuse of fundamental principles of law or where order of the Tribunal, etc. has resulted in grave injustice. For interference under [Article 227](#), the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. In this connection reference may be made to *Nibaran Chandra Bag Vs. Mahendra Nath Ghughu*, AIR 1963 SC 1895; *Rukmanand Bairoliya Vs. the State of Bihar & ors.*, AIR 1971 SC 746; *Gujarat Steel Tubes Ltd. Vs.*

Gujarat Steel Tubes Mazdoor Sabha & ors., AIR 1980 SC 1896; Laxmikant R. Bhojwani Vs. Pratapsing Mohansingh Singh Pardeshi, (1995) 6 SCC 576; Reliance Industries Ltd. Vs. Pravinbhai Jasbhai Patel & ors., (1997) 7 SCC 300; M/s. Pepsi Food Ltd. & Anr. Vs. Sub-Judicial Magistrate & ors., (1998) 5 SCC 749; and Virendra Kashinath Ravat & ors. Vs. Vinayak N. Joshi & ors. (1999) 1 SCC 47).

**8.** It is well settled that power under [Article 227](#) is of the judicial superintendence, which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. (Chandra Bhushan Vs. Beni Prasad & ors., (1999) 1 SCC 70; Savitrabai Bhausahab Kevate & ors. Vs. Raichand Dhanraj Lunja, (1999) 2 SCC 171).

**9.** In *Ajaib Singh Vs. Sirhind Co-operative Marketing cum Processing Service Society Ltd.*, (1999) 6 SCC 82, the Hon'ble Apex Court has held that there is no justification for the High Court to substitute its view for the opinion of the Authorities/ Courts below as the same is not permissible in proceedings under Articles 226/227 of the Constitution. It must be remembered that jurisdiction of High Court under [Article 227](#) of the Constitution is not appealable but supervisory. Therefore, it cannot interfere with the findings of fact recorded by Courts below unless there is no evidence to support findings or the findings are totally perverse. (*Mohan Amba Prasad Agnihotri Vs. Bhaskar Balwant Aheer*, AIR 2000 SC 931).

**10.** In *Indian Overseas Bank Vs. Indian Overseas Bank Staff Canteen Workers' Union* (2000) 4 SCC 245, the Court observed that it is impermissible for the Writ Court to re-appreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the awards passed by Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have

become final. The same cannot be disturbed for the mere reason of having based on materials or evidence not sufficient or credible in the opinion of Writ Court to warrant those findings. At any rate, as long as they are based upon some material which are relevant for the purpose, no interference is called for. Even on the ground that there is yet another view which can reasonably and possibly be taken the High Court can not interfere.

**11.** In *Union of India Vs. Rajendra Prabhu*, (2001) 4 SCC 472, the Hon'ble Apex Court held that the High Court, in exercise of its extraordinary powers under [Article 227](#) of the Constitution, cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of Authorities below.

**12.** In *Surya Dev Rai Vs. Ram Chander Rai and others* (2003) 6 SCC 675, it was held that in exercise of supervisory power under [Article 227](#), High Court can correct errors of jurisdiction committed by subordinate Courts. It also held that when subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or jurisdiction though available is being exercised in a manner not permitted by law and failure of justice or grave injustice has occasioned, the Court may step in to exercise its supervisory jurisdiction. However, it also said that be it a writ of certiorari or exercise of supervisory jurisdiction, none is available to correct mere errors of fact or law unless error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or disregard of the provisions of law; or, a grave injustice or gross failure of justice has occasioned thereby.

**13.** In case of *Jasbir Singh Vs. State of Punjab* (2006 ) 8 SCC 294, it was held that while invoking the provisions of [Article 227](#) of the Constitution, it is provided that the High Court would exercise such powers most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. The power of

superintendence exercised over the subordinate courts and tribunals does not imply that the High Court can intervene in the judicial functions of the lower judiciary. The independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions."

**14.** Thus, it is apparent that the power under article 227 of the Constitution is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. This Power is not in the nature of power of appellate authority enabling re-appreciation of evidence. It should not alter the conclusion reached by the Competent Statutory Authority merely on the ground of insufficiency of evidence. As observed in *Commandant, 22nd Battalion, CRPF and others Vs. Surinder Kumar* (2011) 10 SCC 244, only in an extreme case, where on the face of it there is perversity or irrationality, there can be judicial review under Articles 226 or 227.

**15.** In the instant case the main argument of learned counsel for the petitioner is that in the above stated matter after investigation, charge sheet was submitted for offences under section 147/323/324/325/504/506/308 IPC and the court of Magistrate took cognizance for these offences but later on further investigation was conducted by order of Circle Officer and thereafter a report was submitted in the court that no offence under section 308 IPC is made out. It may be observed that once the Magistrate has taken cognizance for offences under section 147/323/324/325/504/506/308 IPC, it has no power to review its own order for dropping the section 308 IPC from the cognizance. Section 308 IPC is a Session triable case and petitioner would have opportunity before the Sessions Court at the time of charge to raise the plea that no offence under section 308 IPC is made out. The revisional Court has also considered the matter in correct perspective and revision was dismissed. After perusing the record, it can not be said that the

impugned orders are against law or suffering from perversity. As observed earlier, in exercise of its extraordinary powers under Article 227 of the Constitution, this Court cannot re-appreciate the evidence nor it can substitute its subjective opinion in place of the findings of court below. It is impermissible for the Writ Court to re-appreciate evidence liberally and drawing conclusions on its own on pure questions of fact for the reason that it is not exercising appellate jurisdiction over the orders/awards passed by the Court or Tribunal. The findings of fact recorded by the fact finding authority duly constituted for the purpose ordinarily should be considered to have become final. In view of aforesaid, no case any interference in the impugned orders is made out.

**16.** Petition is **dismissed**. Interim order, if any, stands vacated.

**Order Date :-** 06.06.2022

Neeraj