

Court No. - 1

Case :- GOVERNMENT APPEAL No. - 1624 of 2004

Appellant :- State of U.P.

Respondent :- Ajai Mishra @ Taini And 3 Ors.

Counsel for Appellant :- A.H.Rizvi, Government Advocate, Nagendra Mohan, Sushil Kumar Singh

Counsel for Respondent :- S.K. Shukla, Brij Mohan Sahai, Salil Kumar Srivastava, Sumit Kumar Singh

Connected with

Case :- CRIMINAL REVISION No. - 221 of 2004

Revisionist :- Santosh Gupta

Opposite Party :- State Of U.P. And 4 Ors.

Counsel for Revisionist :- Sushil Kumar Singh

Counsel for Opposite Party :- Govt. Advocate, Rajiva Dubey

Hon'ble Ramesh Sinha, J.

Hon'ble Mrs. Renu Agarwal, J.

On 19.12.2022, this Court has passed the following order :-

"The judgment of the above-captioned cases was reserved on 10.11.2022, however, during the course of dictation, this Court deems it appropriate to seek some clarification from the learned Counsel for the parties for proper adjudication of the matters.

Accordingly, let the matter be listed on 21.12.2022 for clarification from the learned Counsel for the parties.

Registrar (Listing) of this Court is directed to inform this order to the learned Counsel for the parties so that the learned Counsel for the parties shall appear on the aforesaid date before this Court."

Today, Shri Sushil Kumar Singh, learned Counsel for the complainant/revisionist-Santosh Gupta, Shri Arunendra, learned Additional Government Advocate for the State/appellant and Shri Salil Kumar Srivastava, learned Counsel for the accused/opposite parties are present.

After hearing the learned Counsel for the parties, the judgment was reserved on 10.11.2022, but on 11.11.2022, a miscellaneous application under the heading '*Application for permission to submit written arguments on behalf of revisionist/victim*' has been filed by one Rajeev Gupta, claiming himself to be the son of the revisionist-Santosh Gupta, in the Registry of this Court in Criminal Revision No. 221 of 2004, which was listed before this Court along with list of miscellaneous application on 15.11.2022 but when the said miscellaneous application filed by one Rajeev Gupta was called out on 15.11.2022, office was called and made a query as to how office had entertained and listed the miscellaneous application filed by Rajeev Gupta before this Court when the judgment was reserved on 10.11.2022, upon which, on realizing the mistake, took back the said miscellaneous application and marked as wrongly listed before this Court as the judgment of the case was reserved on 10.11.2022.

At this juncture, Rajeev Gupta, who was present before this Court on 15.11.2022, appeared in person to press the aforesaid miscellaneous application and stated that though Shri Sushil Kumar Singh, learned Counsel has argued the criminal revision no. 221 of 2004 but as his Senior Counsel Shri Jyotinjay Mishra, learned Senior Advocate has not addressed the issue involved in criminal revision no. 221 of 2004 as he was not well on 10.11.2022, therefore, written arguments have been prepared and the same may be taken on record.

However, this Court, while appreciating the aforesaid plea of one Rajeev Gupta and considering the facts that after hearing the learned Counsel for the parties at great length, the judgment of the above criminal revision and appeal was reserved on 10.11.2022 and while doing so, learned Counsel for the parties were not permitted to file any written arguments even they

prayed for the same at that moment, therefore, this Court had declined to entertain the aforesaid plea of one Rajeev Gupta.

Today, on pointed query being made from Shri Sushil Kumar Singh, learned Counsel for revisionist as to whether revisionist-Santosh Gupta is alive or not and if revisionist-Santosh Gupta is not alive, then, whether any application for bringing on record the legal heirs of revisionist-Santosh Gupta has been filed or not for survival/continuance of the aforesaid criminal revision, Shri Sushil Kumar Singh, learned Counsel for the revisionist submits that though revisionist-Santosh Gupta has died on 20.07.2005, but no such application bringing on record the legal heirs of revisionist has been filed on behalf of the legal heirs of the revisionist for the survival/continuance of the aforesaid criminal revision, however, he has filed an application for listing under his signature in Government Appeal No. 1624 of 2004 on 05.04.2022 without any affidavit in support thereof, which was registered as C.M. Application No. 09 of 2022, in which he has stated that revisionist-Santosh Gupta has died and Rajeev Gupta, who is the legal heirs of the revisionist, is doing *pairvi* of the case.

It is an admitted position that there is no application in Criminal Revision No. 221 of 2004 to the effect that revisionist-Santosh Gupta died; there is no application on behalf of the legal heirs/victim for bringing on record the name of the legal heirs/victim; there is no application to the effect that Rajeev Gupta is the legal heirs of the revisionist-Santosh/victim for survival/continuance of Criminal Revision No. 221 of 2004, therefore, considering the submission of Shri Sushil Kumar Singh, learned Counsel for the revisionist that revisionist-Santosh Gupta died and Rajeev Gupta is the legal heir of the revisionist, this Court deems it appropriate to grant time to Shri Sushil Kumar Singh to bring on record the actual and correct

position by means of the appropriate application, in the interest of justice as well as to afford further opportunity to Rajeev Gupta, who claim himself to be legal heirs of the revisionist so that his Senior Counsel Shri Jyotinjay Mishra, learned Senior Advocate may appear and argue the revision filed by the revisionist.

It transpires from perusal of the record of Government Appeal No. 1624 of 2004, that C.M.Application No. 09 of 2022, which is an application for listing and said to have been filed by Shri Sushil Kumar Singh, learned Counsel for the revisionist, is not on record.

Office is directed to trace the aforesaid C.M. Application No. 09 of 2022 filed in Government Appeal No. 1624 of 2004 and place it on record.

Though Shri Sushil Kumar Singh, learned Counsel for the revisionist has stated that after the death of revisionist/complainant-Santosh Gupta, his legal heir, namely, Rajeev Gupta, may pursue the criminal revision No. 221 of 2004, but on perusal of the record, it transpires that neither in the Government Appeal no. 1624 of 2004 nor in the Criminal Revision No. 221 of 2004, after the death of the revisionist/complainant-Santosh Gupta, no fresh power/vakalatnama on behalf of the legal heirs of the revisionist/complainant-Santosh Gupta has been filed by Shri Sushil Kumar Singh, Advocate.

However, in the interest of justice, on the request of Shri Sushil Kumar Singh, learned Counsel for the revisionist, two weeks' time is granted to him for filing appropriate application bringing on record the legal heirs of the revisionist-Santosh Gupta for survival/continuance of Criminal Revision No. 221 of 2004 as well as to file fresh power on behalf of legal heirs of

revisionist-Santosh Gupta, if so desires, after serving a copy of the same to the learned Counsel for the accused/opposite parties, who may file objection, if any, within a week thereafter.

Let the matter be listed for final hearing **before the appropriate Bench in the third week of January, 2023**. It is clarified that the matter shall not be treated as tied up or part heard to this Bench.

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(Mrs. Renu Agarwal, J.) (Ramesh Sinha, J.)

Order Date :- 21.12.2022

Ajit/-