

making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4)The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

Prior to its substitution, Clause (g) read as under:-(g) make an order directing the juvenile to be sent to a special home,-(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;(ii) in case of any other juvenile for the period until he ceases to be a juvenile:Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit."

88. As the appellants Devendra Kumar alias Jhunna and Avdhesh have attained the age of majority many decades ago, no purpose of law will be served to keep them in special and juvenile home.

89. Apart from that the appellants Devendra Kumar alias Jhunna and Avdhesh are directed to deposit Rs.50,000/- fine before the court concerned, which will be payable as compensation to Vimla Devi-PW-4 the wife of the deceased Shiv Narain and in case of her death, the said amount will be paid to her legal heirs to the satisfaction of trial court.

90. Appeal stands **partly allowed** in respect of appellants Devendra Kumar @ Jhunna and Avdhesh, as the sentence awarded

to them by trial court is quashed and they have been dealt with under Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2000. Appeal is dismissed in respect of convict Krishna Kumar @ Chuttan and Rajmun.

91. As conviction and sentence passed by learned court below in respect of accused Krishan Kumar alias Chuttan and Rajmun is affirmed in present appeal by this judgment and they have been enlarged on bail during the pendency of appeal, they are directed to surrender before the trial court to serve the sentence awarded by court below in impugned judgment within two weeks and in case of their non-appearance the trial court shall ensure their arrest by issuing appropriate process against them, and on their appearance they will be sent to jail custody for undergoing the sentence as awarded by trial court and affirmed by this Court.

92. Let a copy of this judgment be sent to court below/ Session Judge, as the case may be for necessary compliance.

93. This court appreciates the valuable assistance and hard work which has been put in by Sri Ajay Kumar Pandey, learned Amicus Curiae, we quantify his fee as Rs.25,000/- which shall be paid to him by the High Court Legal Services Authority, Allahabad High Court. Learned Registrar General of the High Court will oversee the payment.

(2025) 1 ILRA 149

REVISIONAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 03.01.2025

BEFORE

THE HON'BLE MANJIVE SHUKLA, J.

Criminal Revision No. 1237 of 2024

Shamima & Ors.

...Revisionists

Versus

State of U.P. & Anr.

...Opposite Parties

Counsel for the Revisionists:

Kali Charan Yadav

Counsel for the Opposite Parties:

G.A.

A. Criminal Law – Criminal Procedure Code, 1973 – Section 227 – Discharge – Abuse of process of law – Co-accused of the same Case crime number have been acquitted – Effect – Discharge application of other co-accused was rejected – Validity challenged – Held, once for identical charges and on the basis of the identical evidence based on the testimonies of the identical witnesses, co-accused of the same case crime number have been acquitted from the charges, then if other co-accused are permitted to be tried by the trial court without there being any new evidence on record, there would be one and the only one conclusion i.e. their acquittal from the charges, as such allowing to proceed the second trial would amount to abuse of the process of the Court. (Para 22)

Criminal Revision allowed. (E-1)

(Delivered by Hon'ble Manjive Shukla, J.)

1. Heard Sri Pratish Upadhyay, Advocate holding brief of Sri Kali Charan Yadav, learned counsel for the revisionists and learned A.G.A. appearing for the State.

2. The instant Criminal Revision arises out of an order dated 03.02.2024 passed by the learned Additional Sessions Judge/Special Judge (P.O.C.S.O. Act), Basti in Special Sessions Trial No. 2800039 of 2016 (State Vs. Mohit and Others) whereby, the revisionists' application filed under Section 227 Cr.P.C. for discharge had been rejected. □

3. Facts of the case, in brief, are that an F.I.R. was lodged under Sections 363,

366 I.P.C. and Section 7/8 of P.O.C.S.O. Act in Police Station, Parasrampur, District Basti which was registered as Case Crime No. 554 of 2015. In the F.I.R., wife of Hamid Ali i.e. Safia alias Shafiqun Nisha, Mohid, Gyasuddin, Shariffuddin @ Babbu, Irshad, Mehsar, Samima, Taudeen, Bauhar and Gasili were named and it was alleged that they enticed Razia Khatoon and kidnapped her. The alleged victim, Razia Khatoon and others filed a Criminal Misc. Writ Petition No. 19293 of 2015 (Rajiya Khatoon and Others Vs. State of U.P. and Others), wherein Rajiya Khatoon claimed that she is major and is living with the main accused Taudeen and a Division Bench of this Court passed an order on 10.08.2015 whereby it was provided that the accused/petitioners shall not be arrested till submission of the police report under Section 173(2) Cr.P.C. The police filed charge-sheet under Section 173 (2) Cr.P.C. and arrested the main accused Taudeen, Gyasuddin and Safia alias Shafiqun Nisha.

4. The police filed charge-sheet against the main accused, Taudeen under Sections 363, 366, 376, 120-B, 506 I.P.C. and under Section 3/4 of the P.O.C.S.O. Act and charge-sheet against the other accused including the present revisionists was filed under Sections 363, 366, 120-B, 506 I.P.C. and Section 16/7 of the P.O.C.S.O. Act.

5. The present revisionists, after filing of the aforesaid charge-sheet against them, filed a petition under Section 482 Cr.P.C bearing CrI. Misc. Application No. 22868 of 2016 (Shamima and Others Vs. State and Another) and this Court was pleased to pass an interim order on 01.08.2016 whereby it was provided that no coercive steps shall be taken against the applicants in Case Crime No. 554 of 2015.

6. Since Taudeen, Gyasuddin and Safia alias Shafiqun Nisha were already arrested, therefore sessions trial in respect of the said accused was separated and was numbered as Special Sessions Trial No. 1000066 of 2015 (State of U.P. Vs. Taudeen and two others) and in respect of other accused of Case Crime No. 554 of 2015, Special Sessions Trial was numbered as 2800039 of 2016 (State Vs. Mohid and Others). It is worth to note it down at this stage that the evidence collected by the police and the witnesses relied on are identical in both the aforesaid criminal trials.

7. The Special Sessions Trial No. 1000066 of 2015 (State of U.P. Vs. Taudeen and two Others) had been concluded and vide judgement and order dated 22.08.2023 passed by the learned Additional Sessions Judge/Special Judge (P.O.C.S.O. Act), Basti, the main accused of the Case Crime No. 554 of 2015 i.e. Taudeen and other two co-accused, who are identically placed to that of the present revisionists, have been acquitted from the charges levelled against them.

8. The trial court in its judgement and order dated 22.08.2023 had considered the testimonies of the alleged victim, her mother and other witnesses and found that none of the witnesses have supported the prosecution story and on that basis, had exonerated the main accused and other two accused (identically placed to that of the revisionists) from all the charges.

9. The revisionists after the conclusion of the aforesaid trial vide judgement and order dated 22.08.2023, pressed their petition filed under Section 482 Cr.P.C. which was pending before this Court and this Court disposed of the Criminal Misc.

Application No. 22868 of 2016 vide order dated 07.11.2023 whereby applicants were directed to move an appropriate application for discharge before the trial court with a direction that the trial court shall decide the said application within two months. Pursuant to the aforesaid order dated 07.11.2023, the revisionists filed application for discharge under Section 227 Cr.P.C. wherein they categorically stated that on the basis of the identical evidence on which they are to be tried, the trial of the main accused Taudeen and other two co-accused (identically placed to that of the revisionists) had already been concluded vide judgement and order dated 22.08.2023 wherein accused have been acquitted, therefore now there is no occasion for the trial court to proceed with the trial against the revisionists and as such they are liable to be discharged from the charges levelled against them. The revisionists in their application for discharge categorically stated that the charge-sheet has been filed against the present revisionists on the identical charges, identical evidence has been relied on and same witnesses are sought to be produced who were produced in the trial of the main accused and two other accused i.e. Special Trial No. 1000066 of 2015, therefore once the main accused and other two co-accused have been exonerated from the charges vide judgement and order dated 22.08.2023, the revisionists are also liable to be discharged from the charges levelled against them.

10. The learned Additional Sessions Judge/Special Judge (P.O.C.S.O. Act), Basti had rejected the application filed by the revisionists under Section 227 Cr.P.C. on the ground that at the time of considering the case for discharge, the trial court can only consider the evidence collected by the police and charge-sheet

filed before the court. The trial court had further opined that since the police had filed charge-sheet against the revisionists in Case Crime No. 554 of 2015 under Sections 363, 366, 120-B, 506 I.P.C. and under Section 16/7 of P.O.C.S.O. Act on the basis of evidence, therefore the application filed by the revisionists for discharge is liable to be rejected. □

11. Learned counsel appearing for the revisionists has argued that once it is admitted on record that the main accused of Case Crime No. 554 of 2015 i.e. Taudeen and two other co-accused i.e. Gyasuddin and Safia alias Shafiqun Nisha (identically placed to that of the revisionists) have already been tried and acquitted for the identical charges and on the basis of the identical evidence, there is no occasion for the trial court to reject the application filed by the revisionists (other co-accused) for discharge, as that would amount to abuse of the process of the court. Learned counsel appearing for the revisionists has further argued that the alleged victim had already married to the main accused i.e. Taudeen and out of the wedlock, they have one son who, as on date, is aged about seven years, therefore there is no justifiable reason for not discharging the other co-accused of the Case Crime No. 554 of 2015.

12. It has been vehemently argued that the judgement and order dated 22.08.2023 passed in Special Sessions Trial No. 1000066 of 2015 though has been referred by the trial court in the impugned order dated 03.02.2024 but has not been considered at all. It has also been argued that once there is no denial to the fact that the charges and evidence against the revisionists are identical and witnesses named in the charge-sheet are also same, on the basis of which main accused and

other co-accused facing the same charges have been acquitted, there cannot be any justifiable reason for the trial court to not consider the judgement and order dated 22.08.2023 passed in Special Sessions Trial No. 1000066 of 2015 while deciding the application for discharge filed by the revisionists.

13. Learned counsel appearing for the revisionists has lastly argued that this revision is liable to be allowed and proceedings of the Special Sessions Trial No. 2800039 of 2016 (State Vs. Mohid and Others) are liable to be quashed otherwise if for the same charges, on same evidence and on the testimony of the same witnesses, the trial against the revisionists is allowed to be proceeded, that would amount to abuse of the process of the court as ultimately the revisionists are bound to be exonerated from the charges levelled against them.

14. Learned A.G.A., while arguing for the State, has not disputed the fact that the Special Sessions Trial No. 1000066 of 2015 in respect of the main accused of the Case Crime No. 554 of 2015 i.e. Taudeen and two other co-accused i.e. Gyasuddin and Safia alias Shafiqun Nisha (identically placed to that of the present revisionists) had been decided by the trial court vide judgement and order dated 22.08.2023 wherein the charges, evidence and witnesses relied on by the prosecution are identical to that of the Special Sessions Trial No. 2800039 of 2016 and those accused have been exonerated from all the charges.

15. Learned A.G.A. appearing for the State has argued that while deciding the application for discharge, filed under Sections 227 Cr.P.C., only the charge-sheet

and evidence collected by the police can be taken into account and therefore the trial court while not considering the impact of the judgement and order dated 22.08.2023 passed in Special Sessions Trial No. 1000066 of 2015 (State of U.P. Vs. Taudeen and two others) while deciding the application for discharge, had acted in absolutely legal manner. It has further been argued that there is neither any illegality nor any infirmity in the impugned order dated 03.02.2024 passed in Special Sessions Trial No. 2800039 of 2016.

16. I have considered the arguments advanced by the learned counsel appearing for the revisionists and learned A.G.A. appearing for the State. I have also perused the contents of the impugned order dated 03.02.2024 passed in Special Sessions Trial No. 2800039 of 2016 and the judgement and order dated 22.08.2023 passed in Special Sessions Trial No. 1000066 of 2015.

17. This Court takes note of the fact, in categorical terms, that the State has not disputed that one Taudeen (main accused) and two other co-accused i.e. Gyasuddin and Safia alias Shafiqun Nisha (identically placed to that of the present revisionists) have already been tried for identical charges, on the basis of identical evidence and on the testimonies of the identical witnesses related to Case Crime No. 554 of 2015 and the trial had been concluded vide judgement and order dated 22.08.2023 passed in Special Sessions Trial No. 1000066 of 2015 whereby accused have been exonerated from the charge.

18. Now this Court proceeds to consider the provisions of the Sections 227, 228 and 229 Cr.P.C. which are extracted as under:

"227. Discharge-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

229. Conviction on plea of guilty.-If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon."

19. This Court finds that Section 227 Cr.P.C. provides that if, upon consideration of the record of the case and the documents

trial court without there being any new evidence on record, there would be one and the only one conclusion i.e. their acquittal from the charges, as such allowing to proceed the second trial would amount to abuse of the process of the Court.

23. Once it is admitted by the State that the charges levelled against the accused in Special Sessions Trial No. 1000066 of 2015 are identical and the evidence relied on and the witnesses are also identical to that of the charges levelled against the accused and evidence relied on and witnesses in Special Sessions Trial No 2800039 of 2016, there was no occasion for the trial court to reject the application filed by the revisionists for their discharge and to further proceed with the trial.

24. In view of the aforesaid reasons, this revision is allowed. The impugned order dated 03.02.2024 passed by the learned Additional Sessions Judge/Special Judge (P.O.C.S.O. Act) Basti in Special Sessions Trial No. 2800039 of 2016 is set-aside. The present revisionists who are accused in Special Sessions Trial No 2800039 of 2016 are hereby discharged and the entire proceedings of the Special Sessions Trial No. 2800039 of 2016 are hereby quashed.

(2025) 1 ILRA 154
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.01.2025
BEFORE

THE HON'BLE RAM MANOHAR NARAYAN
SHUKLA, J.

Abbas & Anr. ...Revisionists
Versus
State of U.P. & Anr. ...Opposite Parties