

Court No. - 10

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,Arمندرا Pratap Singh,Pradeep Chaurasia

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

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

Re : Criminal Misc. Application No.7 of 2023

This revision under Section 397/ 401 Cr.P.C. was filed by the complainant against the acquittal of accused persons in Sessions Trial No.518 of 2001.

The revision was admitted by order dated 3.2.2005 and was connected with Criminal Appeal No.1624 of 2004 (State v. Ajay Mishra @ Teny and others). During the pendency of the present criminal revision connected with the aforesaid criminal appeal filed by the State arising out of the common judgment dated 29.3.2004 acquitting the four accused persons, the revisionist has passed away.

For brevity, we do not wish to take stock of other orders passed during the interregnum period but taking note of the Apex Court order passed in Writ Petition (Criminal) No.2 of 2022 on 21.10.2022 as well as the order passed by this Court on 21.12.2022 subsequent to which the present application in the revision is filed, deserve a mention for its disposal.

The application merely brings on record the surviving legal heirs of the revisionist, who, being the complainant, has instituted the present revision against the judgment of acquittal whereby the respondent nos.2 to 5 herein have been acquitted of the charges framed under Section 302 read with Section 34 IPC.

The revisional proceedings before this Court are maintainable under section 397 read with 401 Cr.P.C. Such a proceeding arising out of acquittal of the accused persons would normally abate unlike an appeal where substitution of the victim is permissible under 394 Cr.P.C. but for the pendency of State appeal as aforesaid.

In the present case, however, the connected appeal i.e. Criminal Appeal No.1624 of 2004 instituted by the State is pending against the same very judgment, therefore, the consequence of abatement of the present revision is inconsequential and does not leave the legal heirs of the revisionist as remediless. The legal heirs of the revisionist have an opportunity of participating in the pending criminal appeal instituted by the State as victim, for which, a similar application has been made by the applicants in the connected criminal appeal.

Having regard to the scope of Section 397 read with Section 401 CrPC juxtaposed to Section 394 CrPC, we dispose of this application permitting the legal heirs or any one of them to participate in the connected criminal appeal as victims to which there is no objection by the accused respondents.

We dispose of the present application filed by the applicants in the present revision accordingly. This however does not suggest that we have dealt with the matter in all possible situations where a criminal appeal by the State may not have been instituted against the acquittal.

Order Date :- 13.2.2023

Anupam