

**Court No. - 80**

**Case :-** CRIMINAL APPEAL No. - 1696 of 2023

**Appellant :-** Mithlesh Kumar @ Guddu

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

**Counsel for Appellant :-** Brijendra Kumar

**Counsel for Respondent :-** G.A.

**Hon'ble Subhash Chandra Sharma,J.**

Learned counsel for the appellant is directed to correct the provisions of Act under which this petition has been filed during the course of the day.

Notice has already been served but none appeared on behalf of respondent no. 2.

Heard learned counsel for the appellants, learned A.G.A. for State and perused the record.

This criminal appeal has been filed by the appellant with prayer to allow the present appeal and to quash the charge sheet dated 13.11.2022 and order dated 9.12.2022 in Case Crime No. 764 of 2022, Session Trial No. 1875 of 2022, under Sections 452, 323, 504, 506 IPC and Section 3(1)(Da), 3(1)(Dha), 3(2)(Va) S.C./S.T. Act, Police Station Tilhar, District Shahjahanpur.

It is submitted by learned counsel for the appellant that in this case, as per version in the F.I.R. the incident took place within the house of the informant where abuse by using words relating to the caste of the informant and assault was made. It cannot be said to be in public view, therefore, provisions as contained under Section 3(1)Da and Dha will not apply and no offence under the aforesaid section is made out but this fact was not taken into consideration by the learned Special Judge while taking cognizance of the offence. In this way, the order passed by the learned Special Judge cannot be said to be lawful and based on material on record, therefore, request to quash the order and allow the appeal.

Learned A.G.A. opposed the prayer and urged that in this case, though incident took place within the house of the informant but when hue and cry was made by the wife of the informant, the witnesses came there who also made interference, therefore, it

cannot be said that the incident did not occur on such place which was not in public view. Prima facie case under Section 3(1) Da and Dha S.C./S.T. Act is also made out.

On considering the facts and circumstances of the case, submissions made by learned counsel for the appellant as well as learned A.G.A. perusal of order passed by learned court concerned and provisions as contained under Section 3(1) Da and Dha S.C./S.T. Act, it appears that in the F.I.R. there is allegation that incident took place within the house of the informant and his wife and daughter were abused with words relating to his caste and were also beaten and on hue and cry, witnesses came there who made interference but no such incident has been stated to be committed outside the house or in public view where people were present. Even the witnesses has also not stated that incident took place out side the house or abusive words relating to his caste were also used in their presence. Section 3(1)Da provides that 'intentionally insults or intimidates with intent to humiliate a member of a S.C./S.T. in any place within public view'. Likewise Section 3(1)dha provides that 'abuses any member of a S.C./S.T. by caste name in any place within public view. The language used in the aforesaid Sections indicates that incident must have taken place in public view not within the house only then present provision will apply otherwise not.

In the considered opinion of this Court, the facts as contended and circumstances of the case, legal position as contained under Section 3(1) Da and Dha S.C./S.T. Act, since the incident took place within the house of the informant, therefore, it cannot be said to have taken place in public view as a result, Section 3(1)Da and Dha S.C./S.T. Act cannot be said to be attracted. Thus, the order passed by learned Special Judge to the extent of Section 3(1) Da and Dha S.C./S.T. Act being illegal is hereby set aside.

Accordingly, the present petition is ***allowed partly.***

**Order Date :- 8.12.2023**

A. Singh