

Court No. - 80

Case :- CRIMINAL APPEAL No. - 1673 of 2023

Appellant :- Chandresh Pandey And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ram Raj Pandey, Shubham Pandey

Counsel for Respondent :- G.A.

AND

Case :- CRIMINAL APPEAL No. - 7281 of 2023

Appellant :- Km. Sweety Pandey @ Akanksha Pandey And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ram Raj Pandey, Shubham Pandey

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Since both the criminal appeals have been preferred against the order of Special Judge SC/ST Act, Kanpur Nagar in Special Criminal Case No. 15 of 2020 (Pappu Raidas Vs. Chandresh Pandey and others) dated 22.01.2020 by which the appellants have been summoned under Sections 448, 380, 323, 504, 506 I.P.C. and Section 3(1)X SC/ST Act, hence they are being decided by this common order.

In Criminal Appeal No. 1673 of 2023, notice was served to the respondent no. 2, but no one has turned up.

In Criminal Appeal No. 7281 of 2023, it was stated by learned A.G.A. that notice has been served on the respondent no. 2/complainant.

Heard learned counsel for the appellants as well as learned A.G.A. for the State and perused the material on record.

Facts in brief are that an application under Section 156(3) Cr.P.C. was filed by the respondent no. 2 with allegation that in the year 2004 house no.17 was given to him by some Darshan Lal Malhotra in lieu of compensation amount to be paid as per order passed by Commissioner Workmen Compensation, U.P. Kanpur and the

aforesaid house no. 17 was located adjacent to Durgeshwari Temple, Swaraj Nagar, Panki, Kanpur. He continued to live in that house till the year 2014. When his wife passed away in the year 2014, he departed to Delhi in relation to employment by locking his house and when he returned, he found that the aforesaid house was possessed by the appellants and the household luggage was stolen. When he asked for this fact to the appellants, they assaulted him and also threatened regarding which he informed the Police Station-Panki and also met to S.S.P., but no action was taken by him, as a result he moved an application to the Chief Minister on 31.08.2016, District Magistrate, Kanpur Nagar on 04.11.2016 and also to the President of India, but no action was taken, consequently he filed an application under Section 156(3) Cr.P.C. before the court of Special Judge, S.C./S.T. Act, Kanpur Nagar. The said application was treated as complaint and statements of the complainant and other witnesses under Section 200/202 Cr.P.C. were recorded, thereafter the order in question was passed by the learned court below on 22.01.2020 while summoning the appellants.

It is submitted by learned counsel for the appellants that in this case, as per version in complaint, the house in dispute was typed as '18' and thereafter it was hand written as '17'. The house no. 17A was owned by the appellants and he had no concern to house no. 17 or 18 to which complaint has been moved only for harassing them. It is also submitted that in the complaint no any word has been made regarding insult by the appellants to the respondent no. 2 relating to use of words regarding his caste or his humiliation in public place or in public view, as a result the provisions of S.C./S.T. Act cannot be said to be attracted. There is nothing on record to show that the aforesaid house no. 17 was taken into possession by the appellants. Even there is no any material on record to show that assault was made by the appellants on the respondent no. 2. In the statement of the respondent no. 2/complainant under Section 200 Cr.P.C. nowhere it is mentioned that he was insulted or humiliated by the appellants or words relating to his caste were used by them except the allegation that he was beaten and threatened by them when he asked for his house. It also shows that no any such complaint was made regarding use of words relating to caste and his dispossession was not made by the appellants knowing the fact that he belongs to S.C./S.T. caste. In this way also, the provisions under the S.C./S.T. Act are not attracted at all. In the statements as recorded under Section 202 Cr.P.C. of other witnesses, words relating to the caste of the respondent no. 2 were said to be used by the appellants, but

their statements did not get support with the statement of the respondent no. 2 himself. In this way, the statements are being contradictory and cannot be said to be reliable. Lastly, it is submitted that order has been passed while mentioning the house no. 18 though in the complaint house no. 18 was again over written as 'house no. 17', but this fact was also not taken into consideration by the learned court concerned while passing the order. In this way, the order passed by learned Special Judge S.C./S.T. cannot be said to be passed on material on record, but it is being illegal and inappropriate, the appeals are liable to be allowed.

Learned A.G.A. opposed the prayer as aforesaid, but could not dispute the fact that house no. 18 was not mentioned in the order passed by learned Special Judge though mentioned in the complaint, but later on it was replaced by house no. 17, yet it was not taken into consideration by the learned court below. He also could not dispute that there is no any word mentioned in the complaint regarding use of words relating to the caste of the complainant or his insult or his humiliation in public place or in public view and also there is nothing on record to show that any assault was made by the appellants to the respondent no. 2. even he could not dispute the fact that no any such statement was made by the respondent no. 2 himself before the learned court below when he was examined under Section 200 Cr.P.C.

Considering the facts and circumstances of the case, submission made by learned counsel for the appellants as well as learned A.G.A., complaint, the statements of the respondent no. 2/complainant as well as other witnesses and the order passed by learned Special Judge, it appears that in complaint the dispute between the parties was related to house no. 18 which was later on replaced as 'house no. 17' by cutting the figure 18 on the first page. No any word has been mentioned in the complaint to show that words relating to the caste of respondent no. 2 were used by the appellants or he was insulted or humiliated in public place or in public view on the basis of his caste by the appellants. Likewise in the statement of the respondent no. 2/complainant as recorded under Section 200 Cr.P.C. there is no such word regarding use of abuse relating to his caste though other witnesses whose statements were recorded under Section 202 Cr.P.C. made such statement, whereas the complainant is not making any such allegation in complaint and in his statement as recorded before the learned court concerned, how it can be concluded that such words were used by the appellants to the respondent no. 2/complainant

even though learned court concerned did not consider all these facts while passing the order in question. In this way, it cannot be said to be passed on the material on record and in conformity with the provisions as contained under Section 3(1)X SC/ST Act, as a result it warrants interference by this Court.

Accordingly, the appeals are **allowed** and the order dated 22.01.2020 passed by Special Judge S.C./S.T. Act is set aside. The matter is sent back to the learned court concerned to pass the order afresh in accordance with material on record and the relevant law.

Order Date :- 30.11.2023

Sunil Kr. Gupta