

Court No. - 84

Case :- CRIMINAL APPEAL No. - 1379 of 2022

Appellant :- Chhaviraj Patel And 3 Others

Respondent :- State Of U.P. And Another

Counsel for Appellant :- Aushim Luthra, Atharva Dixit, Dinesh Kumar Singh, Sr. Advocate

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

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

No one has put in appearance for the opp. party no. 2 despite of sufficient service.

This appeal has been filed against the order dated 2.2.2021 whereby the paper no. 11-kha the discharge application of the appellant was rejected by the trial court.

It is argued by the learned counsel for the appellants that the incident is dated 12.2.2009 while the FIR has been lodged on 19.2.2009. The main argument made by the learned counsel for the appellants is regarding section 3(1)(x) of SC/ST Act. In this regard it is argued that in the FIR and in the statements of the complainant and the witnesses, it has come that the dispute was with regard to illegal encroachment of the land of Harijan abadi, hence, the allegedly using caste based words by the appellants cannot be said to be used with intent to humiliate the opp. party no. 2 of his being a member of SC/ST community.

It is argued that against the FIR and the chargesheet both the appellants had approached this court. The arrest of the appellants was stayed by this court till the filing of the report under section 173 Cr.P.C.

It is claimed that after challenging the FIR and the chargesheet now they have come before this court against the rejection of the discharge application by the trial court. The prayer is mainly made that ingredients of section 3(1)(x) of SC/ST Act are not attracted, hence, the prayer is made accordingly.

Learned A.G.A. opposed the prayer.

From the perusal of the record, it is found that in the FIR there is clear version that the dispute was regarding the illegal encroachment of Harijan abadi by the appellants and because of this dispute only the caste based words are said to have hurled by the appellants. What caste based words were used have not been mentioned in the FIR. Thus the words used by the appellants cannot be said to be uttered with the intention of causing humiliation to the opp. party no. 2 because of his belonging to SC/ST community. Hence, in the opinion of the court, no offence under section 3(1)(x) of SC/ST Act can be said to be made out against the appellants. So far as the rejection of the discharge application regarding sections of India Penal Code is concerned, no objection has been raised by the learned counsel for the appellants in this regard.

The order dated 2.2.2021 regarding the rejection of the discharge application is set aside with regard to section 3(1)(x) of SC/ST Act. However, this order is confirmed with regard to sections 323 and 504 I.P.C. The appellants are discharged of offence under section 3(1)(x) of SC/ST Act. Now the case under sections 323 and 504 I.P.C. against the appellants shall be tried as a complaint case as per explanation of section 2(d) of the Code of Criminal Procedure.

The appeal is partly allowed.

Order Date :- 17.10.2023

Gss