

Court No. - 84

Case :- CRIMINAL APPEAL No. - 971 of 2021

Appellant :- Smt Bhawna Devi

Respondent :- State Of Up And 8 Others

Counsel for Appellant :- Rajiv Kumar Tripathi

Counsel for Respondent :- G.A.

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

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

No one has put in appearance for opposite party nos.2 to 9 despite of sufficient service.

This is an appeal filed against judgment and order dated 21.11.2020 passed by the Special Judge (S.C./S.T. Act), Jalaun at Orai in Criminal Misc. Case No.43/ 2020 (Smt. Bhawna Devi Vs. Ashok Kumar and Others), Police Station Konch, District Jalaun, whereby the application of the appellant under Section 156(3) Cr.P.C. was rejected.

From the perusal of the record, it is found that an application under Section 156(3) Cr.P.C. was moved by appellant Smt. Bhawna Devi against eight accused persons on 30.09.2020 regarding incident dated 29.08.2020 with the version that she belongs to the SC/ST community. Previously, she alongwith her husband had worked in the house of Ashok Kumar, the opposite party no.2, where her husband was aksed to go home at 5:00 PM, while she was not permitted to go home upto 10 in the evening. During this period, she was compelled to do massage of accused Ashok Kumar and rest accused Manoj, Vikram, Rambihari and others used to present there, who used to pass taunt against her. Ashok Kumar used to ask her to live as a mistress of rest accused persons and a hike in her salary was promised. She and her husband refused the same by saying that they do not compromise with their dignity. The husband of the first informant was abused and thrashed at the hands of the accused persons, regarding which, she had given an application at Police Station Konch.

On 29.08.2020 at quarter to one, she alongwith her husband was going to take delivery of gas cylinder, the empty gas cylinder was

with them and as soon as they reached at Aryavrat Bank all the accused persons were waiting in ambush. Ashok Kumar abusing her said that she did not work at the house of Ashok and reached at the house of Pradhan. On this she replied that in the house of Pradhan they were safe, while accused Ashok Kumar is not a good person. Ashok Kumar and Rampal having pistols in their hands started thrashing the first informant and her husband with the butt of the rifle. Ashok Kumar tore her blouse with ill intention. She was thrashed against the floor. Her bangles were broken. She sustained injury in her head. Chottey Raja and Rampal exhorted the rest accused persons. Accused Anup said that crowd is collecting there let the first informant and her husband be taken to the office, there also they were thrashed. Someone gave a call to the police at number 100. The police came and took both the parties to the police station. The husband of the first informant was challaned. The report given by the first informant in the police station was thrown away and something was written on the dictation of police and thumb impression of the husband of the first informant was taken on that endorsement. Case Crime No. 177/2020 & 178/2020 was registered against the husband of the first informant. She sent registered letters to higher authorities and S.P., Jalaun at Orai, but no action was taken.

On the basis of this application under Section 156(3) Cr.P.C., a report was summoned from the police station concerned by the court concerned and after receiving the report from police station the impugned order was passed.

It is argued by the learned counsel for the appellant that the application of the appellant has been wrongly rejected by the trial court, while as per version of the application under Section 156(3) Cr.P.C. a cognizable offence is found to be taken place, hence, the prayer is made accordingly.

Learned A.G.A., however, supported the version of the counsel for the appellant and submitted that general allegation is there against the accused persons in the application under Section 156(3) of Cr.P.C.

From the perusal of the record, it is found that the application under Section 156(3) Cr.P.C. of the appellant was rejected by the trial court with the finding that as per report of the police station concerned the husband of the first informant had misbehaved the farmers and government officials of the Samiti. He also damaged the government articles and an illegal pistol was also recovered from him. By opposite party no.9 Anup Kumar the cases at Case

Crime No. 177 of 2020 under Section 353, 504, 427 IPC and Case Crime No.178 of 2020, under Section 3/25 of Arms Act were registered against the husband of the first informant. As per the report, it was found that due to previous litigation there was enmity between the parties and the court finding the incident to be false rejected this application.

If we go through the application under Section 156(3) Cr.P.C., there is allegation of thrashing the husband of the appellant with the butt of the rifle by Ashok Kumar and Rampal. There is allegation against Ashok Kumar of tearing the blouse of the first informant and thrashing her on the floor. Chottey Raja and Rampal are assigned the role of exhortation. Anup is said to have advised to take the first informant and her husband to their office. Manoj is said to have stated that police is in their connivance. Thus, as per the version of this application, no role is assigned to accused Vikram, Ramvihari and Vivek and the role assigned to Manoj is to disclose the fact that the police was in their connivance.

Admittedly, on the same day of incident one FIR at Case Crime No.177 of 2020 under Sections 353, 504, 427 IPC and another FIR at Case Crime No.178 of 2020, under Section 3/25 of Arms Act is said to have been lodged against the husband of the first informant and as per the version of the application under Section 156(3) Cr.P.C. also there is allegation that on the advise of accused Anup they were taken to the office of Sahkari Samiti. As per the report of the police station concerned on the basis of the incident committed by the husband of the first informant two reports against the husband of the first informant at Case Crime Nos. 177 of 2020 and 178 of 2020 above were registered. The version of the FIR on the first reading of the same appears to be concocted one. It does not appeal to the thinking of an average person. No medical regarding injury sustained by the first informant or her husband has been placed before the Court. Though, one medical examination report dated 29th August, 2020 is placed before the Court, wherein three injuries are found on the person of the injured, which are shown to be simple in nature but this medical examination report is shown to be regarding lodging of FIR at Case Crime Nos.177 of 2020 and 178 of 2020. As per the report of the police station concerned, an illegal pistol is also said to be recovered from the possession of the husband of the first informant.

In the opinion of the Court, from the reading of the FIR itself the incident appears to be unbelievable. On the basis of report of the police station concerned the order passed by the trial court appears

to be a justified and legal order, which does not need any interference.

The appeal is, thus, **dismissed**.

Order Date :- 16.10.2023

Radhika