

Court No. - 84

Case :- CRIMINAL APPEAL No. - 2135 of 2023

Appellant :- Kaushal Mishra

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shashi Kumar Mishra

Counsel for Respondent :- G.A., Shamim Uddin Khan

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

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

Learned counsel for the opposite party no. 2 did not appear at the time of argument.

This is an appeal filed against the order dated 07.02.2023 passed by the Special Judge, SC/ST Act, Pilibhit in S.T. No. 155 of 2018 (State Vs. Kaushal Mishra) arising out of Case Crime No. 266 of 2018 under Sections 328, 376 IPC and 3(2)V SC/ST Act, Police Station Kotwali, District Pilibhit, whereby the application 95Kha moved by the appellant was rejected by the trial court.

As per facts of the case, an FIR was lodged by the opposite party no. 2 on 23.06.2018 against the present appellant under Section 376 IPC, Section 66 of I.T. Act and Section 3(1)Da of SC/ST Act with the allegations that as she was student of ITI, Pilibhit she used to travel from Majhola to Pilibhit daily. The appellant, who used to live as tenant near ITI College trapped her in his love web and exploited her physically. He administered her some intoxicant in the sweet and established physical relations with her, he also clicked her nude photographs and made them viral on facebook and whatsapp. When the opposite party no. 2 gained her conscious and complained to the appellant, the appellant warned her to continue physical relations with him. There is further allegation that on 01.06.2018 at 8.00 O'clock she was hurled caste based words by the appellant. All these incidents brought a bad name to her. She had suffered a lot in the society.

After investigation charge sheet was filed against the appellant and the prosecution evidence was recorded. The statement of the appellant under Section 313 Cr.P.c. was recorded on 19.07.2022. After that on 14.12.2022 application paper no. 95Kha was moved

by the appellant before the trial court with the version that he had filed compact disc dated 02.04.2018 (the date prior to the lodging of the FIR) wherein the conversation between the alleged victim, her aunt, her sister-in-law and the appellant is there. This conversation in the typed form has been filed by him in the court. As per this record, the victim was blackmailing the appellant, she extorted money from him, got money transferred in her account and snatched his mobile. In total, she extorted Rs. 2,00,000/- from the appellant as she wanted to purchase some machine and appoint the employees in her boutique. He has never committed rape on the alleged victim. In her statement under Section 313 Cr.P.C. in the answer of question no. 12, he has made the same statement, so permission was sought to send this compact disc. before the Forensic Science Laboratory, so that concerned person might be summoned for evidence. This application was rejected by the trial court with the finding that the compact disc is regarding conversation between the sister-in-law of the alleged victim and the appellant. The sister-in-law of the alleged victim is not related to the incident any way nor she is a witness in the case. It is further opined by the trial court that this compact disc was never supplied to the Investigating Officer by the appellant. In his statement under Section 313 Cr.P.C. the accused has not stated about this compact disc and considering this application to be delaying tactic the application was rejected.

It is argued by the learned counsel for the appellant that after the statement under Section 313 Cr.P.C. at the time of defence evidence only, there was an opportunity before the appellant to place his defence documents before the court, which he did. In fact, as the parties were in love and later on the alleged victim started blackmailing him, she extorted a huge amount of money from him, so it is necessary for him to prove this fact before the trial court, which can only be proved by placing the compact disc before the trial court.

Learned A.G.A. opposed the prayer and submitted that the statement under Section 313 Cr.P.C. was recorded on 19.07.2022. This application Paper No. 95Kha was moved by the appellant before the trial court after five months of his statement on 14th December, 2022, which clearly shows that this application was moved before the trial court with the intention of delaying the trial.

It is clear that this application 95Kha which is disposed off by the impugned order was placed before the trial court after the statement of the appellant recorded under Section 313 Cr.P.C. Till date, the case is languishing in the trial court at the stage of

arguments, which clearly shows that after the statement under Section 313 Cr.P.C. the arguments were not heard by the trial court and this application was moved by the appellant. May be this application has been moved after five months of recording the statement of the appellant under Section 313 Cr.P.C. but it is admitted fact that the arguments had not completed till then. Otherwise also, that was the only stage for the appellant to place his defence before the court when his statement under Section 313 Cr.P.C. had been recorded. Otherwise also, the delay alone cannot be a ground for rejecting the application.

So far as the application 95Kha is concerned, which is appended at page-33 of the paper book, it has been mentioned therein that in the compact disc, which was filed by the accused appellant in the trial court, conversations between alleged victim, her aunt, her sister-in-law and the appellant accused were recorded. It is also the allegation of the appellant that the alleged victim was blackmailing him, extorting money from him and demanding a plot in her name. The appellant has placed before the court by way of supplementary affidavit the applications moved by him before the SSP and SHO concerned. He has also placed before the court the photocopy of the photographs of the parties together showing them in a happy mood. The messages alleged to be sent by the victim demanding a plot in her name have also been placed before the court. The conversation between the alleged victim, her aunt and her sister-in-law shows that they were talking about the present appellant in their conversation. In the answer of question no. 12 of his statement under Section 313 Cr.P.C. also, the appellant has mentioned that the parties were in love and later on the alleged victim started blackmailing him, she extorted money from him and started asking him to transfer a plot in her name, on refusal the appellant has been falsely implicated by her. Thus, it clearly shows that the conversation between the alleged victim, her aunt and sister-in-law is claimed related to the appellant. The appellant by filing this compact disc wants to place that the alleged victim was blackmailing him and demanding a plot in her name.

In the opinion of the court, the compact disc, which is sought to be placed by the appellant in the court, may be helpful for his defence. As this application was moved at the time of defence evidence/argument, so it cannot be said to be moved at a belated stage also. Otherwise also, the delay alone cannot be a ground for rejecting the application. The document sought to be filed by the appellant in his defence in the trial court, is said to be a document, which would help him in his case. The trial court in its order has

mentioned that how this conversation in the compact disc is related to the appellant has not been made clear, this finding appears to be against the evidence on record, as the conversation between the alleged victim, her aunt and her sister-in-law about the present appellant is placed by the appellant before the court. Even if this compact disc was not placed before the Investigating Officer or it was not taken by the Investigating Officer on record, it cannot be a ground to reject the application. The impugned order being against the evidence and the facts on record needs to be interfered with.

The appeal is **allowed**. The impugned order dated 07.02.2023 passed by the Special Judge, SC/ST Act, Pilibhit is hereby set aside. Application paper No. 95 Kha of the appellant is allowed. After placing the compact disc on record, the trial court is directed to provide an opportunity to the appellant to prove the same.

At the time of dictating the order, learned counsel for the opposite party no. 2 appeared before the court.

Order Date :- 12.10.2023

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