

Court No. - 80

Case :- CRIMINAL APPEAL No. - 2301 of 2023

Appellant :- Vikki Sahani And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Anurodh Tripathi

Counsel for Respondent :- G.A.,Shyam Singh

Hon'ble Subhash Chandra Sharma,J.

Learned counsel for the appellants is permitted to correct the relevant section of S.C./S.T. Act in the appeal during the course of the day.

Heard learned counsel for the appellants, learned counsel for the respondent no.2 and learned A.G.A. for the State.

Learned counsel for the appellants submits that in this case, the appellants have falsely been summoned by learned court concerned on the basis of an application filed under Section 156 (3) Cr.P.C., which was directed to be registered at Police Station, and in pursuance to it, Crime No. 146 of 2021 was registered and after investigation, final report was submitted by the police, thereafter, protest petition was filed by the informant/respondent no.2-Ram Adhar, which was treated as complaint and statements of the complainant and other witnesses were recorded under Sections 200 & 202 Cr.P.C., then the summoning order dated 04.01.2023 was passed by the learned court concerned without considering the material available on record.

It is further submitted that Criminal Case No.50 of 2021 was also got registered on the part of appellants against the complainant for causing injuries to them in their house in which the complainant was found to be aggressor and after investigation, charge-sheet was filed by the police. In counter-blast, the present application under Section 156 (3) Cr.P.C. was filed before learned court concerned after inordinate delay even though this fact was not considered by the learned court concerned while passing the order in question, therefore, he requests to set aside the order dated 04.01.2023 as being illegal and inappropriate and prays to allow the appeal.

Learned counsel for the complainant as well as learned A.G.A. opposed the prayer as aforesaid by contending that the incident took place on 29.03.2021 at about 4:00 P.M. on the occasion of Holi in which the appellants committed marpeet with the complainant and other persons of his family with abuse relating to his caste, regarding which he made approach to the Police Station but his FIR was not lodged under the pressure of appellants and then, he intimated the Superintendent of Police concerned, but no action was taken as a result, an application under Section 156 (3)

Cr.P.C. was moved on the basis of which, case was registered but under the pressure of the appellants, without collecting proper evidence, the final report was filed by the police on which the respondent no.2 moved protest petition which was treated as complaint and after recording the statements of the complainant and other witnesses, the summoning order was passed on the basis of material available on record, hence there is no illegality or impropriety in the order but this appeal, being devoid of merit, is liable to be dismissed.

On considering the facts and circumstances of the case, submissions made by learned counsel for both the parties as well as considering the material available on record and on perusal of the order passed by the learned court concerned, it appears that it is an admitted fact that a dispute arose between both the parties on 29.3.2021 at about 4:00 P.M. on the occasion of Holi in which appellants also sustained injuries and committed marpeet, and also the complainant- Ram Adhar and Amar Ram sustained injuries in the same incident. Further, after investigation final report was submitted by the police but on protest petition, it was treated as a complaint and statements of the complainant and other witnesses were recorded under Sections 200 & 202 Cr.P.C. by the learned court concerned and after perusal of material available on record, prima facie, case was found to be made out and the order dated 04.01.2023 was passed for summoning the appellants under Sections 323, 325, 504 & 506 of IPC and 3 (2) (v-a), 3 (1) Dha S.C./S.T. Act.

In view of the above, there is no illegality or impropriety in the order in question but, this appeal is liable to be dismissed as having no force.

Accordingly, this criminal appeal is hereby **dismissed**.

However, as prayed by learned counsel for the appellants, in case the appellants appear and move bail application within thirty days from today, it shall be heard and disposed of in accordance with law as expeditiously as possible in view of the law laid down by the Hon'ble Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and another.***

Order Date :- 1.12.2023

Pravesh Mishra