

Court No. - 84

Case :- CRIMINAL APPEAL No. - 2702 of 2023

Appellant :- Rajveer

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kuldeep Kumar

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 no.2 despite of sufficient service.

This is an appeal against the order dated 02.01.2023 passed by the Special Judge SC/ST Act, Bulandshahr in Special S.T. No.05 of 2023, State Vs. Rajveer, arising out of Case Crime No.597 of 2022, under Section 354 IPC and Section 3(2) 5-A of SC/ST Act, Police Station Dibai, District Bulandshahr.

By impugned order, the trial court took cognizance under Section 354 IPC and Section 3(2) (va) of SC/ST Act against the appellant.

It is argued by the learned counsel for the appellant that the contents of the FIR are totally false. The whole story is concocted one. As has been mentioned in paragraph-16 of the affidavit filed in support of the appeal one Ramesh Chand and Smt. Kamlesh Devi mortgaged their property in favour of appellant for the amount of Rs. 1,50,000/- and Rs.75,000/-. Chunni Bharti, son of Kamlesh Devi was the witness in this mortgage deed written on ten rupees stamp paper. The prosecutrix Shashi is the maid in the house of Chunni Bharti. Some dispute arose between Ramesh Chand, Smt. Kamlesh Devi, Chunni Bharti and the appellant Rajveer in respect of this mortgaged property, thus, Chunni Bharti with the collusion of prosecutrix Shashi has lodged the present FIR on totally false grounds. The appellant is a 64 year old retired army personnel, he cannot be expected to commit such offence. Otherwise also, on the basis of the version of FIR an offence under Section 354 IPC or an offence under Section 3(2) (va) of SC/ST Act cannot be said to be made out against the appellant, hence, the prayer is made accordingly.

Learned A.G.A., however, opposed the prayer and submitted that the offence mentioned in the FIR is covered within the definition of word assault and, thus, the appellant has rightly been summoned by the trial court.

In the FIR impugned, it is the allegation that the appellant misbehaved with the first informant, obscene words were used by the appellant against the first informant. The words used have been mentioned in the FIR. As per the version of the FIR, which is supported by the statements of the first informant under Section 161 Cr.P.C. and 164 Cr.P.C the obscene words as mentioned in the FIR were used by the appellant and certainly the obscene words used against the woman come within the category of a cognizable offence. At the stage of framing of charge the trial court may consider as to under what exact sections the charge shall be framed.

So far as the offence under Section 3(2) (va) of SC/ST Act is concerned, this section can be invoked if an offence mentioned in the schedule is committed with the victim and in this schedule Section 354 of IPC is very well mentioned. Whether the obscene words mentioned in the FIR were spoken by the appellant or not is a factual dispute, which shall be decided by the trial court after the evidence of the parties.

So far as the argument, that a 64 year old retired army personnel cannot commit such an offence as mentioned in the FIR, is concerned there is no rule or criteria that a 64 years old retired army personnel cannot commit an offence as mentioned in the FIR.

In the opinion of the Court, at the time of passing summoning order only a prima face case is to be seen and that has been done by the trial court that on the basis of the charge-sheet which has been filed by the investigating officer after due investigation the cognizance has been taken by the trial court against the appellant under 354 IPC and 3(2) (va) of SC/ST Act.

In the opinion of the Court, no good ground has been placed before the Court to set aside the impugned order. The impugned order dated 02.01.2023 is confirmed.

The appeal is, however, **dismissed**.

Order Date :- 7.11.2023

Radhika