

Court No. - 84

Case :- CRIMINAL APPEAL No. - 2198 of 2022

Appellant :- Ram Badal

Respondent :- State Of U.P. And 5 Others

Counsel for Appellant :- Pankaj Kumar Asthana

Counsel for Respondent :- G.A.

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

1. Heard learned counsel for the appellant, learned A.G.A. for the State-respondent and perused the record.

2. No one has put in appearance on behalf of opposite party nos. 2 to 6 despite of sufficient service.

3. This is an appeal against the judgment and order dated 03.03.2022 whereby application under Section 156(3) Cr. P.C. of the appellant was dismissed by the trial court.

4. As per facts of the case, an application under Section 156(3) Cr. P.C. was moved by the appellant on 01.09.2021 with regard to incident dated 17.05.2021 relating to Aarazi No.611Kha situated at Mauza Chitang, Tappa Upraudha, Pargana Kantit, Tehsil and Police Station Lalganl, District Mirzapur. The appellant is said to be the owner and in possession of this property regarding which, a civil suit is pending before the court concerned and the injunction order with regard to this property is also said to have been passed in favour of the appellant. It is the allegation that on 17.05.2021 at about 10.00 P.M. all the opposite parties entered into the house of the appellant forcibly and started thrashing the appellant. When the order of interim injunction was shown by the appellant to the police, the police also started thrashing the appellant and during this incident the wife of the appellant was taken to Lahangpur Police Chowki forcibly where Chowki In-Charge namely, Ravi Kant Mishra abused her and used caste based words against her. It is the allegation that opposite parties thrashed the appellant and his wife and his wife was expelled from the police station in the night itself, while the appellant was released from the police custody on the next day only. No action was said to have been taken by the police, hence prayer was made accordingly.

5. If we go through the impugned order, the trial court found that there is no allegation of the encroachment over the land of the appellant by the opposite parties. The court disbelieved the incident dated 17.05.2021 opining that no one would go at 10.00 P.M. to some one house just to inform him that land belongs to

him. The trial court found the allegations to be exaggerated one, hence the application of the appellant under section 156(3) Cr. P.C. was rejected.

6. Learned counsel for the appellant argued that land belongs to him only. The injunction order regarding the land is in favour of the first informant and he was thrashed and harassed at the hand of the opposite parties but the first information report was not lodged.

7. Learned A.G.A. however, opposed the prayer.

8. From the perusal of the impugned order, it appears that being the injunction order in favour of the appellant the trial court found that the matter was subjudice in the Civil Court. The court finding the incident to be improbable, rejected the application of the appellant. In the application under Section 156(3) Cr. P.C., there is clear allegation that regarding the land in dispute, the opposite parties entered into the house of the appellant at 10.00 P.M., thrashed the first informant and when the injunction order was shown, the police personnel got provoked and tore the court order. The wife of the appellant was taken to the police station where she was thrashed and hurled caste based words. There is clear allegation of thrashing the appellant and his wife at the hand of the opposite parties. The medical reports of both the first informant and his wife are on record wherein simple injuries are found on the person of both the injured.

9. Thus from the fact mentioned in the application under Section 156(3) Cr. P.C. a cognizable offence against the opposite parties can be said to be made out and when the cognizable offence is said to have been made out on the basis of application moved before the police station concerned or before the court concerned, then it was obligatory that a first information report be registered in this regard.

10. In the police report dated 30.09.2021 regarding the incident dated 17.05.2021 it is mentioned that police reached at the spot on the date of incident and expostulated the parties but again on 18.05.2021 some physical altercation took place between the parties and both the parties were challenged by the police under Sections 151/107/116 Cr. P.C. .

11. Thus a dispute between the parties on 17.05.2021 and 18.05.2021 is verified by the police report. Medical report of the injured persons are on record.

12. In the opinion of the court, cognizable offence can be said to be made out against the appellant on the basis of the facts mentioned in the application and medical reports placed before the court. The trial court has misinterpreted the police report in reaching at the conclusion.

13. The appeal is ***allowed***. Impugned order dated 03.03.2022 is hereby ***set aside***. Trial Court is directed to pass a fresh order on the application of the appellant under Section 156(3) Cr. P.C. within a period of two months from the date of production of certified copy of this order before the trial court.

Order Date :- 17.11.2023

T.S.