

Court No. - 80

Case :- CRIMINAL APPEAL No. - 3947 of 2023

Appellant :- Rohitash Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Appellant :- Sarveshwar Singh, Dilip Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Notice has already been served on respondent no. 4 but none appeared on his behalf.

Rejoinder affidavit filed today by learned counsel for the appellant is taken on record.

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

This criminal appeal has been filed by the appellant with prayer to allow the present appeal and to set aside impugned summoning and cognizance order dated 27.1.2021 passed by learned Special Judge (S.C./S.T.) Act, Etah in Session Trial No. 230 of 2020 and charge sheet no 30 of 2021 under Sections 504, 506 IPC and Section 3(2)(v-a) S.C./S.T. Act, Police Station Kotwali Etha, District Etah.

It is submitted by learned counsel for the appellant that in this case, charge sheet was prepared by the Investigating Officer on 20.1.2021 which was sent to the concerned court by the Supervising Officer and it was submitted by learned A.D.G.C. on 28.1.2021 but the learned Special Judge S.C./S.T. Act took cognizance of the offence vide order dated 27.1.2021 which cannot be said to be passed after submission of charge sheet. Further submitted that on the charge sheet it was endorsed by learned Special Judge 'cognizance taken, register' and it was endorsed on 2.1.2021 whereas charge sheet was submitted by ADGC on 28.1.2021. On the date of cognizance, none bailable warrant was issued by the learned court without taking recourse of summon or bailable warrant, which cannot be said to be in conformity with the provisions of law. The detailed order was passed on 27.1.2021 i.e. one day prior to the submission of the charge sheet, it can also not be said to be lawful, therefore, request to set it aside and allow this

appeal.

Learned A.G.A. opposed the prayer as aforesaid and contended that in endorsement date there is clerical error on the part of the learned Special Judge but could not dispute the fact that it has not been corrected till now.

On considering the facts and circumstances of the case, submissions made by learned counsel for the appellant as well as learned A.G.A. perusal of charge sheet and order for cognizance, it appears that the charge sheet was submitted by learned A.D.G.C. on 28.1.2021 but cognizance was taken on 27.1.2021 i.e. one day prior to submission of charge sheet before the learned court concerned. This error was not corrected by the learned court concerned till today but it is still existing. It also appears that the endorsement 'cognizance is taken and register' has also been made by the learned Special Judge on the charge sheet itself on 2.1.2021 which can never be possible in case charge sheet is submitted by the learned A.G.D.C. on 28.1.2021. It may be clerical error but it might have been rectified by Presiding Officer of the court till now but this fact has not been taken notice by learned Presiding Officer even when the report was called for by order of this court. In this way the order passed by learned Special Judge dated 27.1.2021 cannot be said to be passed in sensible state, likewise the endorsement of the date as made in the charge sheet. As a result order passed by learned court concerned dated 27.1.2021 for cognizance is hereby set aside with the direction to the learned court concerned to pass the order afresh on the basis of material on record in accordance with law.

Accordingly, the present petition is ***allowed***.

Order Date :- 8.12.2023

A. Singh