

Court No. - 84

Case :- CRIMINAL APPEAL No. - 3143 of 2023

Appellant :- Ram Awadh Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Janardan Yadav

Counsel for Respondent :- G.A., Madhu Sudan Dwivedi, Shrawan Dwivedi

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

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

This is an appeal filed against the order dated 22.12.2022 passed by Special Judge SC/ST Act, Azamgarh in complaint case no. 210 of 2020, Shyamnath Vs. Ram Awadh Yadav and others. By this order the appellants are summoned to face trial under sections 420, 504, 506 I.P.C. and Section 3(1) (da) and 3(1) (dha) of SC/ST Act, police station Ahraula District Azamgarh.

It is argued by the learned counsel for the appellants that Lekhpal Surjit Singh had gone for measuring a pokhari situated in gata no. 65 of the village concerned. Shyamker Yadav was also present with him. As soon as they started measurement, Shubham and Shivam both sons of Raj Mani, Rajmani and Shailesh, on the exhortation of Shyamnath hurled abuses, gave threat of life and thrashed them. The documents were torn by them and the lekhpal somehow managed to escape from the spot and lodged FIR on 13.6.2020. Charge sheet in the matter was filed on 28.6.2020 against Shubham, Shivam (both sons of Rajmani), Rajmani, Shyamnath and his son Shailesh under sections 147, 186, 353, 332, 323, 504, 506 I.P.C. In counterblast of this FIR and chargesheet against the opp. party no. 2 and his son along with other co accused persons this false complaint has been filed by way of an application u/s 156(3) Cr.P.C. dated 7.8.2020. In the complaint the incident is shown to be dated 13.6.2020. This is the same date regarding the incident of this date only the FIR was lodged by Lekhpal Surjit Singh against the son of opp. party nos. 2 and three other persons wherein chargesheet has been filed against the opp. party no. 2 and his son also. Thus it is claimed that the complaint has been filed totally on the false ground, hence, the summoning order passed on the basis of statements under sections 200 and 202 Cr.P.C. of the complainant and his witnesses respectively is prayed to set aside.

Learned A.G.A. though opposed the prayer but admitted the fact that after filing of chargesheet against the opp. party no. 2, his son and other persons the present complaint has been filed by opp. party no. 2.

If we go through the application u/s 156(3) Cr.P.C. the above mentioned fact is very much clear that regarding the same incident dated 13.6.2020 mentioned in the complaint, the FIR was lodged by the lakhpal concerned on the same day and the chargesheet was filed against the opp. party no. 2 and his son along with 3 other persons in the matter. After two months of submitting the chargesheet, this complaint is said to have been filed. It has been mentioned in this complaint that an application was moved by Gram Pradhan before the police station concerned regarding the incident but no action was taken. Admittedly, as a prerequisite condition for filing an application u/s 156(3) Cr.P.C., no registered application to S.P. concerned is said to have been given by the opp. party no. 2. In the complaint there is no mention of hurling caste based words by the appellants against the opp. party no. 2. So far as encroachment over the land of gaon sabha by the appellants is concerned, there is no such document on record to show that any encroachment has been done by the appellants over the gaon sabha land. Otherwise also it is the matter of civil nature which can be raised before the competent court itself. Going through the facts mentioned above, this case appears to be a malicious prosecution that has been filed by way of application u/s 156(3) Cr.P.C. just in counterblast of the case filed by Lekhpal Surjit Singh against the son of opp. party nos.2 and three others persons wherein the chargesheet has also been filed against the opp. party no. 2 and his son along with other co accused persons.

In the opinion of the court, the appeal deserves to be allowed and the order passed by the trial court is liable to be set aside.

The order dated 22.12.2022 passed by Special Judge SC/ST Act, Azamgarh in complaint case no. 210 of 2020, Shyamnath Vs. Ram Awadh Yadav and others, under sections 420, 504, 506 I.P.C. and Section 3(1)) (da) and 3(1) (dha) of SC/ST Act, police station Ahraula District Azamgarh is set aside.

The appeal is, thus, allowed.

Order Date :- 12.10.2023/Gss