

Court No. - 84

Case :- CRIMINAL APPEAL No. - 3570 of 2023

Appellant :- Prabhash Chandra

Respondent :- State of U.P. and Another

Counsel for Appellant :- Saurabh Kumar Pandey

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 the opposite party no. 2 despite of sufficient service.

This is an appeal filed by the appellant against the order dated 21.02.2023 passed by the Special Judge, SC/ST Act, Farrukhabad in S.S.T. No. 56 of 2019 (Arvind Vs. Prabhash Chandra) under Sections 323 IPC and 3(1)10 SC/ST Act, Police Station Jahanganj, District Farrukahabad.

By the impugned order the discharge application of the appellant was dismissed by the trial court.

As per facts of the case on the basis of application under Section 156 (3) Cr.P.C. a complaint was registered by the court concerned and after the statement of the complainant under Section 200 and the statement of witnesses under Section 202 Cr.P.C. the appellant was summoned by the trial court to face trial under Sections 323 IPC and 3(1)10 SC/ST Act. After appearance, the discharge application was moved by the appellant which was dismissed by the trial court on the ground that there is ample evidence against the appellant on the record. The statements of the complainant under Section 200 and the witnesses under Section 202 Cr.P.C. are on record. The court opined that as per various judgements of the Apex Court even if there is suspicion then also the charge can be framed against the alleged accused. hence, the discharge application of the appellant was rejected.

It is argued by the learned counsel for the appellant that the incident is totally false. No such incident took place. The date of occurrence in the complaint and in the statement of the first

informant are different. No injury is found on the person of the victim. As it is said that the appellant was in an inebriated condition so no intention of committing any offence can be said to be on the part of the appellant. As per the statement of the complainant when he introduced himself to the present appellant on the date of incident it cannot be said that the parties being stranger before the date of incident were knowing the caste of each other. Otherwise also, on the date of incident since 11.00 in the morning till 4.00 O'clock in the evening the appellant, who is a Government servant, was present in his office at Vikas Khand. Hence prayer is made to set aside the impugned order.

Learned A.G.A. opposed the prayer and submitted that the arguments of the appellant are contradictory. If as per version of the appellant, the opposite party no. 2 had come for some work before him and there some altercation took place between the parties, on the basis of this enmity only the appellant is said to have falsely implicated. Thus, if the parties were known to each other then no question of not knowing the caste of each other arises. The version of the complaint is said to be supported by the witnesses and complainant in their statements.

If we go through the record, it is true that the date of incident in the FIR and in the statement of complainant are different but at the same time rest of the two witnesses have disclosed the correct date of incident in their statements. The complainant and his witnesses all have stated that Brijendra, who was accompanying the complainant, was pushed by the accused. As per version of the complaint and the statements of PW 2 and 3, the appellant slapped the complainant and the opposite party no. 2 could hardly be saved from the appellant. Thus, prima-facie, the allegation of offence under Section 323 IPC appear to be proved by the statements of the complainant and the witnesses.

So far as the allegation of using caste based words is concerned, the complainant in his statement has in very clear words stated that 'he introduced himself to the present appellant that he was an Advocate and sits in Tehsil Farrukhabad'. This version of the complainant makes it clear that before the date of incident both the parties were unknown to each other. When the parties were unknown to each other at the time of incident the appellant cannot be said to be knowing the caste of the complainant. Otherwise also, as there was a physical altercation between the parties so the use of caste based words cannot be said to be made with an intention of humiliating the opposite party no. 2 because of his belonging to the SC/ST community.

Moreover there is no section like 3(1) 10 of SC/ST Act, which had been amended in the year 2016, so in the opinion of the court, no offence under Section 3(1) 10 of SC/ST Act can be said to be made out against the appellant. The rejection of discharge application under Section 3(1) 10 SC/ST Act against the appellant is against the provisions of law and the mandate of judgements of Apex Court.

The appeal is allowed partly. The discharge application of the appellant is allowed with regard to Section 3(1) 10 SC/ST Act. The discharge application of the appellant is rejected with regard to Section 323 IPC. The order dated 21.02.2023 is confirmed with regard to Section 323 of IPC. The order dated 21.02.2023 is set aside with regard to Section 3(1)(10) of SC/ST Act.

Order Date :- 13.10.2023

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