

Court No. - 80

Case :- CRIMINAL APPEAL No. - 3611 of 2023

Appellant :- Umesh Tiwari and others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Arunesh Kumar Singh

Counsel for Respondent :- G.A.,Arvind Kumar Mishra

Hon'ble Subhash Chandra Sharma,J.

List revised. None appeared on behalf of respondent even in the revised call.

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

This criminal appeal has been filed by the appellants with prayer to allow the present appeal and set aside the order dated 6.6.2022 passed by the court of Special Judge S.C./S.T. Act, Kushinagar in Complaint Case No. 172 of 2020 (Durgesh Vs. Umesh Tiwari and others), under Sections 323, 504, 506, 427 IPC and Section 3(1)da, 3(1)dha S.C./S.T. Act, Police Station Ramkola, District Kushinagar.

It is submitted by learned counsel for the appellants that in this case, the appellant no. 1 lodged an N.C.R. against the respondents under Sections 352, 504 IPC on 12.09.2020 relating to the incident said to have been taken place on 18.8.2020. In counterblast present complaint was filed by them by manipulating injury report, though no such injuries were caused to them and also no such incident took place. Further submitted that all the injuries found on the person of the injured are superficial and simple in nature on the basis of which offence as alleged cannot be said to be made out. The statements of complainant and other witnesses were recorded under Section 200/202 Cr.P.C. before the learned court concerned but no any independent witness was examined. In this way, the order passed by learned court concerned cannot be said to be lawful and passed by considering all the facts and circumstances of the case, therefore, request to set it aside and allow the appeal.

Learned A.G.A. opposed the prayer as aforesaid and urged that in this case, incident is said to have been taken place on 21.8.2020 at about 3 p.m. in which Santi Devi and Durgesh Kumar sustained

injuries and their injuries were examined at C.H.C. on 21.8.2020 at about 8 p.m. Further urged that there were several injuries on the person of the injured though simple in nature. The statements of injured, complainant Durgesh Kumar and Shanti Devi were recorded under Section 200/202 Cr.P.C. before the learned court concerned and after considering the statements, summoning order dated 6.6.2022 was passed, after application of mind. It cannot be said to be illegal but this appeal being devoid of merit, is liable to be dismissed.

On considering the facts and circumstances of the case, submissions made by learned counsel for appellants as well as learned A.G.A. for the State, material on record and order passed by learned court concerned along with the statements of complainant and other witnesses those sustained injuries in the same incident and also injury reports prepared by the Medical Officer C.H.C., it appears that the order in question was passed by the learned court concerned by applying its judicial mind and on the basis of material on record, there appears no any illegality and impropriety in the order, therefore, it does not warrant interference by this Court as a result this appeal being devoid of merit, is liable to be dismissed.

Accordingly, the present appeal is ***dismissed***.

However, it is directed that in case, the appellants appear and move bail application before the court concerned within a period of 30 days from today, it will be heard and decided expeditiously as far as possible in the light of case decided by Hon'ble the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another LL 2022 SC 577 decided on 11.07.2022.***

Order Date :- 7.12.2023

A. Singh