

Court No. - 84

Case :- CRIMINAL APPEAL No. - 3555 of 2023

Appellant :- Smt. Meena Devi

Respondent :- State of U.P. and Another

Counsel for Appellant :- Amit Kumar Chauhan

Counsel for Respondent :- G.A.,Devottam Pandey

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

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

No one has put in appearance for the opp. party no. 2.

This appeal has been preferred by the first informant against the order dated 23.3.2023 passed by Special Judge SC/ST Act/ Additional District and Sessions Judge, Ballia in S.T.No. 548 of 2019, State Vs. Sunil alias Sonu, case crime no. 125 of 2019 u/s 323, 504, 506, 452 I.P.C. and section 3(1)(r) and 3(1)(s) of SC/ST Act, police station Sukhpura District Ballia. By the impugned order the application u/s 319 Cr.P.C. of the first informant was rejected.

As per the facts of the case, on 11.9.2019 an FIR was lodged by the first informant/ appellant against the opp. party no. 2 and his son Sonu Pandey with the allegation that on 11.9.2019 both Deena Nath Pandey and his son Sonu Pandey abused her, thrashed her, hurled caste based words and gave threat of life. This dispute is said to have arose regarding flowing of rain water in front of the house of the opp. party. After investigation the chargesheet was filed against Sonu Pandey only u/s 323, 504, 506, 452 I.P.C. and section 3(1)(r) and 3(1)(s) of SC/ST Act. After the statement of Meena Devi, the first informant, an application u/s 319 Cr.P.C. was moved by the appellant with the allegation that the offence was committed by Deena Nath Pandey also while the chargesheet has not been submitted against him. In the statement of P.W.-1 Meena Devi/ the first informant it has come that the incident was committed by both the accused persons, hence, the prayer was made to summon Deena Nath Pandey also.

The application u/s 319 Cr.P.C. was rejected vide order impugned wherein the trial court opined that P.W.-1-the first informant has not made any specific statement regarding thrashing at the hands of Deena Nath Pandey in her cross examination. P.W.-2 Riya Yadav also did not support the prosecution version of committing offence by Deena Nath Pandey. Thus, the application u/s 319 Cr.P.C. was rejected by the trial court.

Learned counsel for the appellant submitted that P.W.-1 the first informant has clearly mentioned in the FIR and also in her statement that Deena Nath Pandey was also present on the spot and he also committed the same offence as committed by

his son. The trial court erroneously rejected the application u/s 319 Cr.P.C.

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

From the perusal of the record, it is found that it is true that in the FIR the names of two accused persons Deena Nath Pandey and Sonu Pandey have been mentioned as the persons who committed the offence against the first informant. In the FIR no eye witness of the incident has been mentioned. If we go through the statements of the witnesses in C.D. including the statement of the first informant Meena Devi u/s 161 Cr.P.C., none of the witnesses namely Parvati Devi, Renu Devi, Riya Yadav and Vijay Yadav have named Deena Nath Pandey as a culprit who committed any offence with the first informant. In her statement in the court also P.W.-1, first informant has stated that both accused persons Deena Nath Pandey and Sonu Pandey came and assaulted her with lathi, danda and hurled caste based abuses. On her hue and cry various persons came and witnessed the incident. The accused persons gave threat of life also. In her cross examination, the first informant has only mentioned that it was only accused Sonu who was having baton in his hands. Thus, the version of the first informant that she was thrashed at the hands of Deena Nath Pandey by baton becomes false and as per the statement of P.W.-1 the incident was witnessed by many of the witnesses but all the witnesses who have adduced before the Investigating Officer including Riya who lives with the first informant in her house have not supported the version of the first informant that Deena Nath Pandey was also present at the time of the incident and he also committed the offence as mentioned in the FIR. In her statement under section 161 Cr.P.C. the first informant herself has stated that Deena Nath Pandey also came and started speaking but specific role of hurling caste based words and thrashing and having baton in his hands is assigned to Sonu Pandey only.

Thus the order passed by the trial court is a well discussed and well founded order and does not suffer from any illegality. Hence it needs no interference. The appeal having no force is liable to be dismissed.

The appeal is, thus, dismissed. The impugned order dated 11.9.2019 is hereby confirmed.

Order Date :- 12.10.2023/Gss