

Court No. - 84

Case :- CRIMINAL APPEAL No. - 3743 of 2023

Appellant :- Ajay Kumar Yadav And 6 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ashok Kumar Mishra, Krishna Kant Tiwari

Counsel for Respondent :- G.A., Vishal Jaiswal, A/A0361/2012

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

Heard learned counsel for the appellants, learned counsel for opposite party no.2 and perused the record.

This is an appeal filed against the order dated 04.03.2023 passed by the Special Judge (S.C./S.T. Act)/ Additional Sessions Judge, Court No.-2, Bhadohi- Gyanpur in Session Trial No.318 of 2021, State Versus Omkar Nath Yadav and others, arising out of Case Crime No. 59 of 2021, under Sections 147, 148, 149, 323, 504, 325, 452, 336, 427, 506 I.P.C. and Section 3(1) r, s of S.C./S.T. Act, Police Station Chauri, District Bhadohi.

By impugned order, the discharge applications paper no.15 Kha and 17 Kha moved by the appellants were rejected by the trial court.

Learned counsel for the appellants submitted that he does not want to challenge the impugned order dated 04.03.2023 regarding sections of IPC. He is only challenging the impugned order with regard to section 3(2) (va) of SC/ST Act.

The attention of the Court is drawn towards the FIR by the learned counsel for the appellants and it has been pointed out that there is no version of using any caste based words by the accused persons in the FIR while it has been lodged on 04.07.2021 at 00:28 hours regarding the incident dated 03.07.2021 at 11:00 hours. Admittedly, the first informant including his wife and son do not belong to the SC/ST community. They belong to the backward class. Only Rakesh Kumar, Anand Pasi and Chandan Pasi, who are said to come for rescue of the first informant and his family members are said to be the victims of using caste based words by the accused persons. Though, in their statements under Sections 161 Cr.P.C. it has come that caste based words were used by the accused persons but no specific words have been mentioned therein as to what caste based words were used by the appellants against the victims. Again it is said that the incident took place inside the house when Rakesh Kumar, Chandan Pasi and Anand Pasi are said to have come and rescued the first informant and his

family members. The house cannot be said to be a place within public view. Otherwise also, it is said that for an offence under Section 3(2) (va) of SC/ST Act the caste based words must be used knowingly and with the intention of humiliating and intimidating the victim because of his being of member of the scheduled caste or scheduled tribe community. As per version of the FIR all the three victims Rakesh Kumar, Chandan Pasi and Anand Pasi are said to have uttered caste based words by the accused persons because they came for rescue of the first informant and his family members. Regarding order in Criminal Appeal No. 5019 of 2021 (Omkar Nath Yadav @ Onkar Nath and 4 Others Versus State of U.P. and Another), which is said to had been filed by the appellants against the cognizance order against them in the same case it is submitted that the finding in that order is the finding upto the stage of summoning only, that finding cannot be taken into consideration at the time of framing charge or at the time of the disposal of application under Section 227 of Cr.P.C., hence, the prayer is made to set aside the impugned summoning order upto the stage of Section 3(2) (va) of SC/ST Act.

Learned counsel for opposite party no.2 opposed the prayer on the ground that the caste based words were used by the accused persons is very much mentioned in the statements under Section 161 Cr.P.C. of all the three victims. It is also claimed that for Section 3(2) (va) of SC/ST Act mere knowledge that a person belongs to the SC/ST community is enough to constitute an offence. Lastly, the attention of the Court is drawn towards the paragraphs-12 and 13 of the order dated 31.05.2022 of the co-ordinate Bench of this Court passed in Criminal Appeal No.5019 of 2021 filed by the present appellants, whereby the Court reached at the conclusion that a prima facie offence under Section 3(2) (va) of SC/ST Act is made out against the present appellants, hence, the prayer is made accordingly.

If we go through the FIR admittedly there is no whisper of hurling any caste based words by any of the accused persons. For the first time, in the statements of the victims Rakesh Kumar, Anand Pasi and Chandan Pasi under Sections 161 Cr.P.C. it has come that caste based words were used by the accused persons against them. Admittedly, what specific caste based words were used against them is not made clear in their statements also. So far as the finding of the co-ordinate Bench of this Court in Criminal Appeal No.5019 of 2021 is concerned that finding is given by the Court against the appellants/ the accused persons with regard to the cognizance order where the Court reached at the conclusion that

the ground existed for summoning the accused persons to face trial under Section 3(2) (va) of SC/ST Act, in the opinion of the Court, that finding of the Court shall be considered upto the stage of cognizance order only that finding certainly cannot come into the way of an order to be passed regarding the discharge application. Thus, the stage when the order of this co-ordinate Bench was passed in Criminal Appeal No.5019 of 2021 is different from the stage the order passed by the trial court on a discharge application. Admittedly, what caste based words were used by the accused persons have not come before the Court upto the present stage.

Otherwise also in *judgment Hitesh Verma Versus The State of Uttarakhand and Another in Criminal Appeal No.707 of 2020 (arising out of SLP (Criminal) No.3585 of 2020* the Apex Court held that the offence under SC/ST Act is covered only when it is committed for the reason that the victim is a person belonging to Scheduled Caste thus for section 3(2) (va) of SC/ST Act apart from knowing that the victim belongs to the SC/ST community the offence must be committed with the intention to humiliate a person of his being related to the SC/ST community.

In the case in hand the offended words are said to have been used by the appellants when the victims came for the rescue of the first informant. Thus it cannot be said that the offended words alleged to be used by the appellants were used because the alleged victims belonged to scheduled caste. In the opinion of the Court, the rejection of discharge application under Section 3(2) (va) SC/ST is against the mandate of the Apex Court as mentioned above.

The appeal of the appellants deserves to be allowed partly. As the appeal has not been pressed regarding sections of IPC, hence, the order dated 04.03.2023 regarding rejection of the discharge application with regard to Sections 147, 148, 149, 323, 504, 325, 452, 336, 427, 506 I.P.C. is confirmed and the order dated 04.03.2023 regarding rejection of discharge application with regard to Section 3(2) (va) of SC/ ST Act is hereby set aside. Appellants are discharged from the offence mentioned under Section 3(2) (va) of SC/ST Act.

The appeal is **allowed** partly.

Order Date :- 28.10.2023

Radhika