

Court No. - 84

Case :- CRIMINAL APPEAL No. - 3761 of 2023

Appellant :- Arshad Jamal And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shashi Shekhar Mishra, Pratima Mishra

Counsel for Respondent :- G.A.

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

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

Learned counsel for the opposite party no. 2 did not appear despite of sufficient service.

This is an appeal filed against the order dated 07.01.2022 passed by the Special Judge, SC/ST Act, Ghazipur in S.T. No. 14 of 2022 (State Vs. Jafar Iqbal and others) arising out of Case Crime No. 376 of 2021, under Sections 147, 148, 323, 504, 506, 325 IPC and Section 3(1) Da, Dha of SC/ST Act, Police Station Kasimabad, District Ghazipur.

By the impugned order, the trial court took cognizance under Sections 147, 148, 323, 504, 506, 325 IPC and 3(1)Da, Dha of SC/ST Act against the appellants along with many other co-accused persons.

It is argued by the learned counsel for the appellants that regarding the same incident the appellants had also filed an FIR, Case Crime No. 377 of 2021 on 13.11.2021 at 20.30 hours. In fact, the appellants are the owners of the disputed property. Previously also in the year 2007 the opposite party no. 2 had tried to encroach upon their land, so a civil suit was filed by them and an injunction order was secured in that case in favour of the appellants and that stay order is still continuing. Hence, prayer is made accordingly.

Learned A.G.A. opposed the prayer.

From perusal of the record, it is found that the incident is admitted to both the parties. Who was the aggressor and who was the defender is to be decided by the trial court after the evidence of the parties.

The only argument made by the learned counsel for the appellants is that the appellants are the owners of the land in dispute, while in the present case, the court has not to decide the ownership of the property rather it is to be seen by this court that the order impugned dated 07.01.2022 needs to be interfered with or not? The physical altercation between the parties is admitted fact and the cross FIRs in the matter are also admitted. The charge sheets in both the cases have been filed by the Investigating Officer.

Looking into the FIR filed on the basis of evidence collected by the Investigating Officer on the record, the impugned order passed by the trial court needs no interference. The impugned order is a legal, well discussed and well founded order passed on the basis of evidence on the record.

The appeal is, thus, **dismissed**.

Order Date :- 18.10.2023

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