

Court No. - 80

Case :- CRIMINAL APPEAL No. - 4870 of 2023

Appellant :- Shyam Dulare And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Pradeep Kumar Chaurasia

Counsel for Respondent :- G.A., Budhi Sagar Tripathi

Hon'ble Vinod Diwakar, J.

1. Heard learned counsel for the appellant and learned A.G.A. for the State-respondent.
2. Learned counsel for the appellants submits that the trial court has committed grave illegality in summoning the appellants vide order dated 6.9.2021 under the provisions of section 3(1)(da) & 3(1)(dha) of the SC/ST Act. The appellants are real brothers of the husband of the informant, therefore, the provisions of the SC/ST Act cannot be attracted against the appellants. In essence, accused as well as complainant both are members of scheduled castes community.
3. Shri Balwant Pratap Singh, learned A.G.A. states that the accused Brijesh has not been made party to the present appeal, whereas the sole ground taken by the appellants is that Brijesh belongs to the scheduled castes, who is a just and necessary party of the case being the member of scheduled caste. The entire case of appellants is based on the case of accused Brijesh.
4. Regrettably, accused Brijesh has not made party in the memo of parties, and the appeal has been drafted in a clever way to take relief from this Court on this sole ground.
5. In the interest of justice, I am giving an opportunity to learned counsel for the appellant to withdraw the instant appeal with

liberty to file a fresh.

6. At the request of learned counsel for the appellant, the instant appeal is dismissed as withdrawn with liberty to file a fresh.

7. Let certified copy of the impugned order be returned to the learned counsel for the appellants as per rule.

Order Date :- 5.12.2023

Anil K. Sharma

[Vinod Diwakar, J.]