

Court No. - 80

Case :- CRIMINAL APPEAL No. - 3554 of 2019

Appellant :- Karmveer And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vivek Sharma

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the appellant, learned counsel for opposite party No.2 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 29.10.2018 passed by Special Judge (S.C./S.T. Act) Amroha in F.R No.233 of 2017 arising out of Case Crime No.230 of 2017, under Sections 354-B, 376, 511, 506 IPC and Section 3(1)(Da) S.C./S.T. Act, Police Station Hasanpur, District Amroha.

Notice to respondent No.2 has been got served through A.G.A but no one is present on her behalf.

As per allegation made in the F.I.R an attempt to commit rape and molestation was made with the victim by the appellants those are real brothers. During investigation no any material was found to infer that such offence was committed by the appellants with the victim, as a result final report was submitted and it was rejected by the learned court concerned vide order dated 29.10.2018 and cognizance of the offence was taken straightway with summoning order which cannot be said to be lawful and based on material on record. It is also submitted that during the course of investigation no any witness came before Investigating Officer to make allegation against the appellants regarding the commission of attempt to rape with the victim by them. The statement of witnesses were recorded in question and answer form but no such inference was likely to be drawn, even though the learned court concerned took into consideration the affidavits filed by the victim and other witnesses those were made part of the case diary and it was also made ground by the learned court that the statement of the victim was not got recorded under section 164 Cr.P.C by the Investigating Officer which cannot be said to be cardinal. It is also submitted that on receiving the final report the learned court may take cognizance of the offence straightway if there is any such material on record constituting the commission of offence or it may issue notice to the informant and on his or her part direct further investigation or

to treat it as complaint or to accept the final report. The learned court rejected the final report straightway, though there was no any such material on record, therefore, the order passed by the learned court cannot be said to be lawful and request to set it aside and allow the appeal.

On the other hand, learned AGA opposed the prayer and contended that in this case, learned court concerned has power to take cognizance of the offence straightway while rejecting the final report and to summon the accused person. Though he could not dispute the fact that during investigation no any such material was found by the Investigating Officer to show that such offence was committed with the victim by the appellants except the statement of the victim herself.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties and perusal of record as well as order passed by learned Special Judge (S.C./S.T. Act) on 29.10.2018, it appears that appellants, four in number, are real brothers, there is allegation of attempt to commit rape with the victim and also of molestation. During the course of investigation except the statement of victim, no any such material was collected by the Investigating Officer on the basis of which inference can be drawn that such offence was committed by the appellants with the victim and prima facie case is made out against them. Even no any protest was filed by the victim herself before the learned court and no any material was brought on record. In such a situation the learned court has an option to reject the final report and to take cognizance of the offence straightway but it is to be done on the basis of material on record which is lacking in the present case. In this way the order passed by the learned court concerned cannot be said to be based on record and in conformity with the provisions of law, as a result it is likely to be set aside. The appeal is allowed and the order dated 29.10.2018 is hereby set aside with direction to the court concerned to pass the order afresh in accordance with law.

Order Date :- 7.12.2023

G.S