

Court No. - 84

Case :- CRIMINAL APPEAL No. - 4388 of 2023

Appellant :- Ashok Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Tiwari Abhishek Rajesh

Counsel for Respondent :- G.A.,Manoj Yadav

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

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

This appeal has been preferred against the order dated 20.3.2023 passed by Additional Sessions Judge Court No. 2/ Special Judge SC/ST Act,Kanpur Dehat in S.S.T.No. 1006 of 2022, State Vs. Ashok Kumar Yadav and another, Case Crime No. 124 of 2021, under Sections 323, 504, 506 I.P.C. and sections 3(1) da, 3(1) dha and 3(2) va of SC/ST Act, police station Rajpur District Kanpur Dehat. By the impugned order the discharge application of the appellants was rejected by the trial court.

As per the facts of the case, the FIR dated 30.10.2021 was lodged by opp. party no. 2 against both the appellants regarding the incident of the same date that at about 2.00 p.m. when she was coming back from Rajpur bazar and reached near her village at a siphon, both the appellants met her who hurled caste based abuses, thrashed her and warned her not to cultivate the land in dispute. They gave her threat of life also. On hue and cry her husband and other witnesses came, the accused persons made good their escape giving threat of life.

After cognizance order in the light of the order of this court, the appellants moved an application under section 227 Cr.P.C. before the trial court with the version that as per the FIR, the husband of the first informant was not with her at the time of the incident while her husband in his statement u/s 161 Cr.P.C. has stated that he was present at the spot at the time of the incident. The villagers have given their affidavits that the appellants were not present in the village on the date of the incident. The statement of Ramautar is shown to be recorded by the Investigating Officer under section 161 Cr.P.C. while he was not alive at the time of the incident. His death certificate is appended with the paper book. In fact the appellants are the bonafide purchasers of the land in dispute regarding which their civil suit against the mother of the appellants is pending before the civil court wherein interim relief has been granted in favour of the appellants. In the FIR the incident is shown to be dated 30.10.2021. On 16.10.2021 an FIR was lodged by the appellant no. 1 against Kailash the son of the opp. party no. 2 under sections 323, 504, 506 I.P.C. In counterblast to that application/FIR, this FIR has been lodged after 14 days on 30.10.2021 by the opp. party no. 2 on concocted facts. Regarding the dispute of the land between the parties the inquiry report dated 20.10.2021 was filed by the Sub

Inspector Anilesh Kumar, police station Rajpur District Kanpur Dehat whereby the complaint of opp. party no. 2 against the mother of the appellants was found false. Again attention of the court is drawn towards the report of Sub Divisional Magistrate concerned whereby it is shown that the husband of opp. party no. 2 wanted to encroach upon the land of the appellants. Thus, it is submitted that the appellants are the bonafide purchasers of the land in dispute and just to pressurize the appellants, this FIR has been lodged by opp. party no. 2 on false allegations, while two applications under section 156(3) Cr.P.C. moved by the husband of opp. party no. 2 have already been dismissed by the court finding the allegations to be false, hence, the prayer is made accordingly.

Learned counsel for the opp. party no. 2 submitted that in fact, the incident took place as mentioned in the FIR. The opp. party no. 2 sustained injuries. The witnesses have supported the version of the FIR, only then the chargesheet has been filed against the appellants, hence, the prayer is made accordingly.

If we go through the FIR, there is allegation of hurling caste based abuses, thrashing opp. party no. 2 and giving threat of life to her. In support of the FIR, the statements of the husband of the first informant and other witnesses are there on record. The trial court while passing the impugned order found that enmity regarding the land in dispute exists between the parties. The medical report of the first informant in support of the FIR has been placed before the court. Regarding the plea of alibi, the trial court found that the ground of alibi cannot be decided at the state of disposal of the discharge application. Thus, on the basis of statement the first informant, statements of witnesses and medical report on record, the trial court rejected the discharge application of the appellants and passed the impugned order.

It is true that plea of alibi cannot be decided at the stage of disposal of the discharge application. So far as the injuries regarding the incident mentioned in the FIR is concerned, the medical report has been placed before the court, whereby simple injuries are found on the person of opp. party no. 2. There is allegation in the FIR and in the statements of the witnesses regarding use of abusive language, giving threat of life by the appellants, hence, in the opinion of the court, the allegation regarding offence mentioned under sections of Indian Penal Code would be decided after the evidence of the parties by the trial court, but so far as the allegations regarding the offence under sections 3(1) da, 3(1) dha and 3(2) va of SC/ST Act are concerned, the Apex Court in judgment **Hitesh Verma Versus The State of Uttarakhand and Another, Criminal Appeal No.707 of 2020 (arising out of SLP (Criminal) No.3585 of 2020, dated 05.11.2020** held that an offence under the Act of SC/ST is not established merely on the fact that the informant is a member of scheduled caste unless there is intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the FIR or in the statements of the witnesses, no specific caste based word has been mentioned used by the appellants.

Admittedly, in the present case, as per the version of FIR itself, the incident took

place because of enmity regarding land between the parties. Thus, it cannot be said that the appellants hurled any caste based word to the victim because of being her a person belonging to SC/ST community.

The appeal is partly **allowed**.

The order dated 20.3.2023 passed by Additional Sessions Judge Court No. 2/ Special Judge SC/ST Act, Kanpur Dehat in S.S.T.No. 1006 of 2022, State Vs. Ashok Kumar Yadav and another, Case Crime No. 124 of 2021 is set aside with regard to sections 3(1) da, 3(1) dha and 3(2) va of SC/ST Act. The order dated 20.3.2023 is confirmed with regard to sections 323, 504, 506 I.P.C. The appellants are discharged from the allegations u/s 3(1) da, 3(1) dha and 3(2) va of SC/ST Act.

Order Date :- 30.10.2023/Gss