

Court No. - 84

Case :- CRIMINAL APPEAL No. - 4422 of 2023

Appellant :- Somdev Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Hemant Kumar Dubey

Counsel for Respondent :- G.A., Kamalesh Singh, Raghavendra Sharan Tiwari

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

Rejoinder affidavit filed on behalf of the appellants today is taken on record.

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 7.12.2022 passed by Special Judge SC/ST Act, Kushinagar place Padrauna in complaint case no. 129 of 2019, Kapil Dev Vs. Som Dev and others, under sections 419, 420, 467, 468 471, 452, 504, 506 I.P.C. and Section 3(2)(v) of SC/ST Act, police station Kaptanganj District Kushinagar.

By the impugned order, the trial court summoned both the appellants to face trial under the aforesaid sections.

As per the version of the complaint, regarding the incident dated 10.2.2019 wherein the opp. party no. 2, the complainant got injured his report was not lodged at the police station concerned rather he was forced by the police to enter into the compromise otherwise a threat was given to him to be implicated in false cases. When opposite party no.2 did not enter into the compromise as a result of threat given showing the incident dated 19.03.2019 FIR against the opp. party no. 2 and his family members was lodged on totally false allegations. On 29.3.2019 when due to the injury sustained in the incident dated 10.2.2019 the first informant/ opp. party no. 2 was not feeling well and he was taken to the hospital in his absence Sub Divisional Magistrate concerned issued bailable warrants against him and his family members. These bailable warrants were manipulated into non bailable warrants by the present appellants. The appellants along with other police personnel came to the house of the first informant and forcibly

tried to arrest him. When they were asked about the arrest warrant, they misbehaved and abused. The first informant and his wife were picked up from their house on 31.3.2019. Next day on 1.4.2019, they were produced before the Sub Divisional Magistrate concerned. Caste based words were also hurled against them. Due to this behavior of the appellants, the opp. party no. 2 was deeply humiliated.

After the statements of the complainant/opp. party no. 2 and his witnesses under sections 200 and 202 Cr.P.C. respectively, the trial court passed the impugned order summoning the appellants to face trial under the above mentioned sections.

As per appellants they never manipulated the Bailable Warrant into Non-Bailable Warrant rather they received the non bailable warrant only from the court concerned which was complied by them.

While learned counsel for opposite party no.2 opposed this argument and drew the attention of the Court towards alleged NBW issued by the Court concerned and argued that in this warrant word 'N' has been added by manipulation and thus the word 'BW' has been manipulated as 'NBW'. The order and the questionnaire regarding issuance of 'BW' (bailable warrants) by the court have been placed before the court.

The main allegation against the appellants is that the bailable warrants issued against the opp. party no. 2 and his family members by the court were manipulated into non bailable warrants by the appellants by committing forgery. The appellants have been summoned accordingly by the trial court vide impugned order. The opp. party no. 2 placed before the court the impugned order whereby bailable warrants were issued against the first informant and others. The questionnaire has also been placed before the court that it was only a bailable warrant which was issued against the opp. party no. 2 and his family members while the appellants have placed before the Court a non bailable warrant and have submitted that in compliance of this non bailable warrant the opp. party no. 2/ his family members were arrested. However, this warrant placed before the court is appended at page 48 of the paper book is a NBW. Before word B.W. the word 'N' is clearly seen to be added later on. Whether it was manipulated by the appellants or it was received in the same condition from the court itself is to be proved by the appellants. The copy of G.D. is placed before the court but G.D. placed before the court does not make it clear whether it was B.W. or it was N.B.W. which was received in the police station

concerned. It is up to the appellants to prove that they received the N.B.W. which was executed by them. Till date before the court there is no authentic document in reply of the court order dated 29.3.2019 issuing bailable warrant against the opp. party no. 2 and others.

On the basis of the evidence and facts mentioned above a prima facie case under the above sections can be said to be made out against the appellants. Hence, the order passed by the trial court on the basis of the evidence placed before the court cannot be interfered with. The appeal lacks merit and is liable to be dismissed.

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

Order Date :- 7.11.2023

Gss