

Court No. - 80

Case :- CRIMINAL APPEAL No. - 3418 of 2019

Appellant :- Narendra Sharma

Respondent :- State of U.P. and Another

Counsel for Appellant :- Navin Kumar Srivastava, Deepak Singh

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

1. Heard learned counsel for the appellant as well as learned A.G.A. and perused the material on record.

2. This present criminal appeal has been filed with a prayer to allow the present criminal appeal and setting aside impugned cognizance order dated 03.04.2019 passed by learned II Additional Sessions Judge/ Special Judge, S.C./S.T. Act, Jhansi over the charge-sheet submitted by the I.O. dated 09.12.2018 in charge sheet no. 200 of 2018, Case Crime No. 250 of 2018 in Special Case No. 766 of 2019, under Sections 323, 504, 506 I.P.C. and 3(1) of S.C./S.T. Act at Police Station- Gursarai, District- Jhansi.

3. It is submitted by learned counsel for the appellant that in this case, the appellant was Head-Master in Primary School, Gursarai and the respondent/informant was Shiksha Mitra at that school. She was irregular to her duties and that was the reason a complaint was made against her by the appellant to the District Basic Education Officer, on which inquiry was conducted and a report dated 18.09.2018 was prepared in which her dereliction from duty was found. On account of that rivalry, present F.I.R. on 07.12.2018 was lodged at the police station showing the incident to have taken place on 05.12.2018 for causing assault and injuries to her with insult by use of words relating to her caste. It is also contended that an F.I.R. in this regard was also lodged by the appellant as Crime No. 251/2018 on 07.12.2018 alleging the incident to have taken place on the same date, at the same time regarding misbehavior and assault by the respondent to the appellant. All these facts were not taken into consideration by the I.O. while investigating the case, but filed charge-sheet before the learned court on the basis of which cognizance order was passed by the learned court on 03.04.2019 without applying its judicial mind which cannot be said to be lawful, therefore request to set it aside and allow the appeal.

4. Learned A.G.A. opposed the prayer as aforesaid and contended that admittedly, the incident took place on 05.12.2018 at about 02:00 P.M. between the appellant and the respondent in which she was beaten by the appellant and injuries were caused on her person. She was taken to the hospital by home-guard from the police station and was medically examined in which injuries were found on her person, which is clear from the injury report prepared by the Medical Officer on the same day. It is also contended that an F.I.R. regarding same incident was also lodged by the appellant himself at the police station against the respondent, on the same day accusing the respondent for *maar-peet* and abuse. In this way, admittedly it can be said that incident took place on 05.12.2018 at about 02:00 P.M. between the parties and at this stage it cannot be decided as to which party was aggressor but it is possible only during trial. Learned court concerned passed the order after considering all the material on record and there is no any illegality, but this appeal is devoid of merits and liable to be dismissed.

5. Considering the facts and circumstances of the case, submissions made by learned counsel for the appellant as well as learned A.G.A. for the State, perusal of record, the material collected during investigation, the order passed by learned court concerned, it appears that admittedly the incident took place on 05.12.2018 between the parties at about 02:00 P.M. regarding which F.I.Rs. from both of the sides were got registered. Injuries were also found on the respondent during medical examination, it establishes prima facie case. At this stage, it cannot be concluded as to which party was aggressor in the dispute, but it is possible only during trial. Learned court concerned took cognizance of the offences on the basis of material on record collected during investigation of the case, there is no any illegality or impropriety in the order passed by learned court dated 03.04.2019 but this appeal being devoid of merits is liable to be dismissed.

6. Hence, this appeal is **dismissed**.

7. However, the appellant may have an option to move an application for discharge application before the learned court concerned at an appropriate stage, which shall be heard and decided in accordance with law on the basis of material on record.

8. It is also directed that in case, appellant appear and move bail application before the learned court concerned within a period of 30 days from today, the same shall be heard and disposed of as expeditiously as possible in the light of latest law as laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil**

**Vs. Central Bureau of Investigation and another LL 2022 SC
577 decided on 11.07.2022.**

Order Date :- 7.12.2023
Nitika Sri.