

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7174 of 2023

Appellant :- Digambar And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ram Jatan Yadav

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the appellants, learned A.G.A. for State and perused the record.

This criminal appeal has been filed by the appellants with prayer to allow the appeal and set aside the cognizance/summoning order dated 17.3.2023 passed by Special Judge S.C./S.T. Act, Hathras and charge sheet No. 382 of 2022 dated 28.12.2022 as well as entire proceedings of Special Case No. 332 of 2023 arising out of Case Crime No. 468 of 2022, under sections 452, 323, 504, 506 IPC and Sections 3(2)5A S.C./S.T. Act, Police Station Sadabad Kotwali, District Hathras, pending in the court of Special Judge S.C./S.T. Act, Hathras.

It is submitted by learned counsel for the appellants that in this case, an F.I.R. was lodged after inordinate delay on the basis of an application under Section 156(3) Cr.P.C. In the F.I.R. allegation of rape was also made against the accused persons but during investigation the allegation of rape was not found to be established. As a result charge sheet was filed under Sections 452, 323, 504, 506 IPC and Sections 3(2)5A S.C./S.T. Act only. Further submitted that during investigation the involvement of two accused persons was found to be false that was the reason they were exonerated, it shows that the incident as alleged in the F.I.R. is not true but accused persons have falsely been implicated in this case and charge sheet has also been filed by the Investigating Officer without considering all these facts. The learned Special Judge S.C./S.T. Act did also not consider all these facts while taking the cognizance of the offence at the time of passing the order dated 17.3.2023 which is in question in this appeal, therefore, request to set it aside and allow the appeal.

Learned A.G.A. opposed the prayer as aforesaid and urged that in this case, during investigation the material was collected by the

Investigating Officer on the basis of which charge sheet was filed before the learned Special Judge S.C./S.T. Act. At the time of passing the order, learned court has considered all these fact and circumstances of the case and material collected during investigation. Prima facie case under Sections 452, 323, 504, 506 IPC and Sections 3(2)5A S.C./S.T. Act was found to be established as a result cognizance was taken vide order dated 17.3.2023. There is no any illegality in the order passed by the learned court.

On considering the facts and circumstances of the case, submissions made by learned counsel for the appellants as well as learned A.G.A. and perusal of record and order passed by learned Special Judge S.C./S.T. Act, it appears that learned court concerned has passed the order in question after considering all the facts and circumstances of the case and material collected during investigation by the Investigating Officer and also recorded his satisfaction about prima facie case against the appellants, there appears no any illegality and impropriety either of facts or law in the order passed by learned Special Judge S.C./S.T. Act on 17.3.2023 but this appeal being devoid of merit is liable to be dismissed.

Accordingly, this criminal appeal is ***dismissed***.

Order Date :- 2.12.2023

A. Singh