

**Court No. - 84**

**Case :-** CRIMINAL APPEAL No. - 5460 of 2023

**Appellant :-** Kaushalendra Singh @ Vikat Singh And 2 Others

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Appellant :-** Anurag Singh

**Counsel for Respondent :-** G.A., Agnivesh, Jadu Nandan Yadav

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

Learned counsel for the opposite party no. 2 has filed counter affidavit today.

Let the counter affidavit be kept on record.

Heard learned counsel for the appellants, learned counsel for the opposite party nos. 2 and 3 and perused the record.

This is an appeal against the judgement and order dated 17.11.2022 passed by the Special Judge, SC/ST Act, Ramabai Nagar a final report No. 373 of 2022 (Sunita Vs. kaushlendra @ Vikat Singh etc.) in Case Crime No. 543 of 2020 under Sections 365, 366, 376, 506 IPC and 3(2)(v) SC/ST Act, Police Station Rura, District Kanpur Dehat.

It is argued by the learned counsel for the appellants that on the basis of FIR lodged by the first informant as Case Crime No. 543 of 2020 regarding incident dated 08.12.2019 to 11.12.2019, after investigation the final report was submitted by the Investigating Officer but by the impugned order rejecting that final report the appellant have been summoned by the trial court.

In fact, on 09.12.2019 regarding incident dated 08.12.2019 an FIR was lodged by appellant no. 2 Amarjeet Singh against six named accused persons including Rampal, the husband of the opposite party no. 2 and the father of opposite party no. 3 that on 08.12.2019 at 7.30 P.M. when his 24 years old cousin - Rajan had gone to purchase sugar from the shop of Sanjay Yadav, regarding some prior dispute an altercation took place among them. Hearing this altercation, Dharmendra, Ramu, Sarvan, Man Singh Yadav, Shivveer and Rampal also came and all of them thrashed Rajan,

confined him in a room and with common intention of causing his death put him on fire by sprinkling petrol on him and fled away. Afterwards, the father of the first informant, his uncle Daljeet Singh, Shiv Mangal Singh and Radha d/o Ghanshyam Singh came to rescue Rajan and took him to the hospital in seriously burnt condition. This FIR was lodged on 09.12.2019. After lodging this FIR the injured succumbed to the burn injuries.

The opposite party no. 2 - Sunita started pressurizing the family members of Rajan-deceased and the first informant for compromise. She was also giving threat for implicating them in false cases. In this regard, an application was moved by Amarjeet Singh to the A.D.G. on 24.11.2019. He also moved an application before the Chief Minister on 17.02.2021. He also lodged a complaint at Jan Sunwai Portal on 24.12.2019 and 25.02.2021. When the appellants did not give consent to compromise, this false FIR on the basis of application under Section 156(3) Cr.P.C. was filed by the opposite party no. 2 - Sunita w/o Rampal, one of the accused in the FIR filed by Amarjeet Singh.

This application under Section 156(3) Cr.P.C. was moved with regard to incident from 08.12.2019 to 11.12.2019 on 12.02.2020, on the basis of this application under Section 156(3) Cr.P.C., the FIR was lodged on 09.11.2020. On the basis of FIR lodged by Amarjeet Singh against the husband of opposite party no. 2 and other co-accused persons, finding the FIR of opposite party no. 2 filed on the false allegations the final report was submitted by the police. Against that final report, the opposite party no. 2 moved a protest petition and on that application after hearing the learned counsel for the opposite party no. 2, the trial court passed the impugned order.

It is argued that the whole facts regarding FIR No. 546 of 2019 filed by Amarjeet Singh were mentioned in the final report but the trial court did not even write a single line about that final report or the facts mentioned therein and simply on the basis of statements of alleged victim under Sections 161 and 164 Cr.P.C. passed the impugned order. Hence, prayer is made to set aside the impugned order.

Learned counsel for the opposite party no. 2 opposed the prayer and submitted that the trial court had gone through the complete

documents including final report and only after perusing the evidence on record the impugned order has been passed. The order is claimed to be justified order passed on the basis of statement of the victim and the documentary evidence placed before the court by the first informant-opposite party no. 2 and the victim.

Learned counsel for the opposite party no. 2 drew the attention of the court towards para-21 of the judgement in ***Nahar Singh Vs. The State of Uttar Pradesh & another, 2022 LiveLaw (SC)291*** and submitted that the court can also take into consideration the other material apart from the evidence collected by the Investigating Officer at the time of passing order on the protest petition.

From perusal of the record, it is found that the FIR No. 546 of 2019 was filed by Amarjeet Singh against six accused persons including Rampal, the husband of opposite party no. 2 under Sections 307, 147, 323, 435 & 342 IPC alleging that all the accused persons set on fire his cousin Rajan after sprinkling petrol on him and later on, applications were also moved by Amarjeet Singh that the opposite party no. 2 Smt. Sunita was giving threat of implicating them in a false case if they do not enter into compromise in the case against her husband. After investigation the final report was filed by the Investigating Officer and against that final report on the protest petition of the opposite party no. 2 the trial court passed the impugned order.

So far as the judgement of the Apex Court placed before this court by the learned counsel for the opposite party no. 2 is concerned, the court is agree with the findings of the Apex Court that the court passing the order on the final report has to take into consideration both, the evidence collected by the Investigating Officer and the material placed before the court by the first informant after moving the protest petition. In the present case, the court only mentioned that the final report was filed in the case but he did not discuss the evidence collected by the Investigating Officer rather the court did not even register its satisfaction that how the court reached at a conclusion that the finding of the final report was not justified. Thus, the learned counsel for the opposite party no. 2 cannot take benefit of this judgement.

After perusing the record, it is clear that in the impugned order the

trial court did not mention even a single line about the facts mentioned in the final report. The satisfaction of the officer that the final report has been filed against the evidence on record, has also not been registered in the impugned order. It appears that the trial court was determined to reject the final report and summon the appellants as there is not even a single word discussing the final report that how the trial court reached to the conclusion that the facts mentioned in the final report are wrong and in comparison to the evidence collected by the Investigating Officer the evidence considered by the trial court in passing the impugned order, is more reliable.

In the opinion of the court, the order passed by the trial court is an order ignoring the evidence on record. The trial court has committed a manifest error of law and fact in reaching at the conclusion of summoning the appellants without giving any finding on the final report, which was rejected by the court concerned by the impugned order.

The appeal is **allowed**. The impugned order dated 17.11.2022 is hereby set aside.

The trial court is directed to pass a fresh order in this regard after hearing both the parties, within one month from the date of receiving a certified copy of this order.

**Order Date :- 18.10.2023**

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