

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6744 of 2023

Appellant :- Devendra Pratap Singh @ Ashwani Kumar Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Siddhartha Baghel, Prateek Mishra

Counsel for Respondent :- G.A., Devendra Dahma, Vimal Kumar Tripathi

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

Heard learned counsel for the appellant, learned A.G.A. for the State, learned counsel for opposite party no.2 and perused the record.

This is an appeal against order dated 10.11.2022 passed by the Special Judge (SC/ST Act), Kushinagar in Special Session Trial No.839 of 2022 arising out of Case Crime No.11 of 2022, under Sections 147, 427, 504, 323, 506 IPC and Section 3(1) (da), 3(1) (dha) of SC/ST Act, Police Station Vishunpura, District Kushinagar.

By impugned order, the appellant was summoned to face trial under Sections 147, 427, 504, 506, 323 IPC and Section 3(1) (da) & 3(1) (dha) of SC/ST Act.

It is argued by the learned counsel for the appellant that regarding incident dated 28.06.2021 the present FIR was lodged by the opposite party no.2 on 10.01.2022 on the basis of an application under Section 156(3) of Cr.P.C. dated 14.07.2021. In fact, the present FIR is a counterblast of the FIR lodged by the manager of the appellant regarding the incident in dispute dated 28.06.2021. As per FIR lodged by the manager of the appellant registered as Case Crime No.0136 of 2021 the incident took place at 1:30 hours in the noon when the manager of the appellant was getting cultivate the field of the appellant, Vishambhar Nath Mal, Rajesh, Dukhhi alongwith 10-12 other persons came, used caste based words, started thrashing him with baton and stick. The tractor was damaged. Driver Mithlesh was also thrashed at the hands of these accused persons. It is argued that regarding this incident application under Section 156(3) Cr.P.C. was moved after 18 days of the incident by Rajesh, who is already an accused in the FIR lodged by the manager of the appellant. Though, in the FIR lodged

by Rajesh the incident is shown to be at 11:00 AM on the same day, wherein the allegation is of hurling caste based abuses, thrashing with baton, sticks and blows. Vishambher, Sonia, the wife of Dukhhi and Dukhhi are said to have been injured in the incident. It is argued that the appellant was not present on the spot. In fact regarding the property in dispute a civil case is pending between the owners of the land, wherein the temporary injunction granted to the opposite party no.2 has been vacated on merits by the trial court, hence, the prayer is made accordingly.

Learned A.G.A. and learned counsel for opposite party no.2 opposed the prayer and submitted that there is nothing on record to show that the civil suit is pending between the parties and when the summoning order was passed before the trial court there was no FIR lodged by the manager of the appellant. When the documents placed by the appellant before this Court were not present before the trial court the order cannot be challenged on the grounds first time argued before this Court. Otherwise also, in the FIR lodged by the manager of the appellant no property number has been mentioned by the manager of the appellant, hence, the prayer is made accordingly.

Though, it is true that at the time of passing impugned order the FIR registered as Case Crime No.0136 of 2021 said to be lodged by the manager of the appellant was not before the trial court, but if we go through the statements of the witnesses, which were certainly before the trial court at the time of passing cognizance order, Vishambhar the injured of the present FIR has admitted that land, the crop of which is said to be uprooted by the appellant, was a disputed property and the dispute between the parties was of the ownership of that land. In paragraph-14 of the affidavit filed in support of the appeal, it is mentioned that regarding the property in dispute there is litigation between the owners of the land certainly the opposite party no.2 not claiming himself to be the owner of the property, was not party to that suit, but it is an admitted fact that the land is the same, the ownership of which is disputed between the appellant and the employer of the opposite party no.2. As the opposite party no.2 claims himself the cultivator of the land on batai basis, thus, it is clear that if any incident took place, as is clear from the present FIR and the cross FIR also, which was lodged on the very next day of the incident, that was the dispute regarding the ownership of the property. Whether the injured persons mentioned in the impugned FIR Case Crime No.11 of 2022 were thrashed at the hands of the appellant and the co-accused persons or the appellant alongwith co-accused persons

uprooted the crop grown by the opposite party no.2 or not or whether the opposite party no.2 was abused or not is a matter of fact, which is to be decided by the trial court after the evidence of the parties. But so far as Sections 3(1) (da) and 3(1) (dha) of SC/ST Act are concerned certainly the cognizance under these sections must have been taken on the basis of the version of the FIR which makes it very much clear that any incident if it took place between the parties it was a dispute regarding the property. It is not denied that a civil dispute regarding ownership of this property is pending in the civil court.

Though, it is argued by the learned counsel for the opposite party no.2 that no document regarding the civil dispute is placed before the Court, in the affidavit filed in support of the appeal there is mention of O.S. No.1184 of 2010 between Dinesh Kumar and Sushila Devi. As per the present FIR also, the opposite party no.2 is said to have cultivating the field of Dinesh Kumar Mal. The plaintiff in the civil suit is Dinesh Kumar Mal and the defendant is Sushila Devi from whom the appellant claims his rights on the basis of will being her mother. This clearly shows that the dispute between the parties is the 'ownership' of the land. Thus, if any caste based words as alleged in the FIR were hurled by the appellant they were certainly not hurled because of the opposite party no.2 being a member of scheduled caste or scheduled tribe community, but it was because of the land in dispute.

For Sections 3(1) (da) and 3(1) (dha) of the SC/ST Act, it is condition precedent that insult must be intentional, with intent to humiliate a member of scheduled caste or scheduled tribe community in any place within public view. In the FIR, there is nothing like that, that the caste based words were hurled by the appellant with intent to humiliate the opposite party no.2 because of his being a member of scheduled caste or scheduled tribe community, so in the opinion of the Court, the cognizance taken against the appellant under Sections 3(1) (da) and 3(1) (dha) of SC/ST Act is against the mandate of the statute laid down in the various judgments of the Apex Court, specifically in **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** where the Apex Court 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.

Thus, as per the version of FIR itself offence under Section 3(1) da, 3(1) dha of SC/ST Act cannot be said to be made out against the appellant.

The appeal is allowed partly. The cognizance order dated 10.11.2022 is confirmed with regard to Sections 147, 427, 504, 506, 323 IPC and the cognizance order dated 10.11.2022 is set aside with regard to Sections 3(1) (da) and 3(1) (dha) of SC/ST Act.

Order Date :- 6.11.2023

Radhika