

Court No. - 80

Case :- CRIMINAL APPEAL No. - 5968 of 2023

Appellant :- Subedar And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Jaswant Rai, Hariom Upadhyay

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Notice has been served on opposite party no. 2 even though none appeared on his behalf.

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 set-aside the summoning order dated 14.06.2022 passed by the court of Special Judge, S.C./S.T. (P.A.) Act, Ghazipur in Complaint Case No. 174 of 2021 (Mithilesh Kumar Vs. Dinesh Kumar Maurya and others), under Sections 323, 504, 506 I.P.C. and 3(1)(r), 3(1)(s) S.C./S.T. (P.A.) Act, Police Station-Khanpur, District-Ghazipur.

It is submitted that in this case summoning order was passed by learned Special Judge, S.C./S.T. (P.A.) Act on 14.06.2022 against the appellants Subedar, Ajay Kumar and Shamsheer whereas all the three appellants belong to S.C./S.T. caste. Learned counsel for the appellants has also filed caste certificates of the appellants issued by competent authority/Tehsildar dated 27.09.2016, 07.10.2022 and 15.10.2022 in which their caste has been mentioned as S.C./S.T. (Chamar). Therefore, the appellants being the members of S.C./S.T. community cannot be prosecuted under the provisions of S.C./S.T. Act even though learned court concerned did not consider this fact while passing the order as aforesaid. In this way, the order in question is illegal and liable to be set-aside.

On the other hand, learned A.G.A. opposed the prayer as aforesaid, but could not dispute the fact that the appellants belong to S.C./S.T. caste.

Considering the facts and circumstances of the case, submissions made by learned counsel for the appellants as well as learned

A.G.A., the order passed by learned Special Judge S.C./S.T. (P.A.) Act dated 14.06.2022 and the caste certificates filed on behalf of appellants, the order dated 14.06.2022 relating to appellants Subedar, Ajay Kumar and Shamsher are hereby set-aside only to the extent of Section 3(1)(r), 3(1)(s) S.C./S.T. (P.A.) Act.

Accordingly, this appeal is partly allowed.

Order Date :- 6.12.2023

Sunil Kr. Gupta