

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6113 of 2023

Appellant :- Dallu Singh

Respondent :- State Of U.P. And 6 Others

Counsel for Appellant :- Narendra Kumar,Rabindra Bahadur Singh

Counsel for Respondent :- G.A.,Mohammad Sakir

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

Counter affidavit filed on behalf of opposite party nos.2 to 7 is taken on record.

Heard learned counsel for the appellant, learned counsel for opposite party nos.2 to 7 and perused the record.

By filing this appeal order dated 02.03.2023 passed by the Special Judge, SC/ST (P.A.) Act, Moradabad in Complaint Case No.43 of 2021, Dallu Singh Versus Jameel & others has been challenged, whereby the complaint of the appellant was dismissed under Section 203 of Cr.P.C.

It is argued by the learned counsel for the appellant that the incident took place as mentioned in the complaint. The version of the complaint is supported by the complainant in his statement under Section 200 Cr.P.C. and his witnesses in their statements under Section of 202 Cr.P.C. The trial court has wrongly rejected his complaint under Section 203 of Cr.P.C. The appellant is the owner of the property in dispute. The opposite party nos.2 to 7 want to encroach upon the land of the appellant.

Learned counsel for opposite party nos.2 to 7 opposed the prayer and submitted that 20 years back opposite parties had purchased this land through power of attorney. It is also argued that there are contradictions in the version of the complaint and the statements of the witnesses. The complainant has not mentioned in his statement that he was given any threat of life. He has also not mentioned that what caste based words were used against him by the opposite party nos.2 to 7, hence, the prayer is made accordingly.

From the perusal of the record, it is found that the application of the appellant under Section 156(3) of Cr.P.C. was ordered to be

registered as a complaint vide order dated 30.10.2021 and after the statements of the complainant under Section 200 Cr.P.C. and his witnesses under Section 202 Cr.P.C. the trial court passed the impugned order rejecting the complaint of the appellant under Section 203 of Cr.P.C.

The trial court found that the complainant in his complaint has not mentioned any threat of life given by the opposite party nos.2 to 7. As to what abusive language was used against him has not been mentioned in his statement. In the statement of the complainant what caste based words were used have also not been mentioned. PW-1 has also not mentioned in his statement that what caste based words were used against the appellant and the court found that it has not been proved prima facie before the court that the complainant or his son were thrashed at the hands of the opposite party nos.2 to 7. The trial court finding the statements of the witnesses contradictory rejected the complaint under Section 203 of Cr.P.C.

At the time of arguments learned counsel for the appellant argued before this Court against the order dated 30.10.2021. When after the arguments at the time of dictation of judgment he was pointed out that he has challenged order dated 02.03.2023 regarding rejection of the complaint under Section 203 of Cr.P.C. and not order dated 30.10.2021, whereby the application of the appellant under Section 156(3) Cr.P.C. was ordered to be registered as a complaint then only he argued on order dated 02.03.2023 and submitted that the version of the complaint has been well supported by the complainant and the witnesses in their statements.

If we go through the complaint it is very well mentioned therein that on the land of the sons of the complainant/appellant the opposite party nos.2 to 7 constructed kacche pakke house and when they were asked to remove their encroachment they started hurling abuses and used caste based words. In the whole complaint, there is no version that the appellant was thrashed at the hands of the opposite party nos.2 to 7, nor there is any version that a threat of life was given to him. No specific abuses has been mentioned in the whole complaint. Though, in the complaint the caste indicated word used against the complainant has been mentioned but this version of using caste based words has not been supported by the complainant in his statement under Section 200 and by his witness as PW-1 in his statement under Section 202 of Cr.P.C. Otherwise also, the allegation is of making encroachment by opposite party nos. 2 to 7 upon the land of the complainant/ his

sons is there so even if the caste based words are said to be used against the complainant by the opposite party nos.2 to 7, then also those words cannot be said to be used because of the complainant being a member of a scheduled caste or scheduled tribe community rather these words can be said to be used by the opposite party nos.2 to 7 because of the dispute of the parties regarding the encroachment upon the land. There is no version of thrashing the complainant in the complaint but PW1 in his statement has stated that the complainant was thrashed at the hands of the accused persons, while even the complainant has not stated in his statement that he was thrashed at the hands of the opposite party nos.2 to 7. Thus, the statements of the witnesses are found contradictory and not in consonance with the complaint. The statement of the complainant also cannot be said to be supporting to the version of the complaint.

In the opinion of the Court, the trial court has rightly rejected the complaint of the appellant under Section 203 of Cr.P.C. on the basis of the evidence on record.

There is no ground to interfere in the order impugned.

The appeal is, hereby, **dismissed**.

Order Date :- 30.10.2023

Radhika