

Court No. - 80

Case :- CRIMINAL APPEAL No. - 6511 of 2023

Appellant :- Babu Ram And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Neelabh Srivastava, Vijai Kumar Singh

Counsel for Respondent :- G.A., Md Zakir Husain, Md. Nuruddin Khan

Hon'ble Subhash Chandra Sharma, J.

Rejoinder affidavit filed today by learned counsel for appellant is taken on record.

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

This criminal appeal has been filed by the appellants with prayer to allow the present appeal and set aside the summoning order dated 15.5.2023 passed by learned Special Judge S.C./S.T. Act, Jaunpur Complaint Case No. 171 of 2021, under Sections 323, 504, 506 IPC and Section 3(1) Da and Dha S.C./S.T. Act, Police Station Shahganj, District Jaunpur.

It is submitted by learned counsel for the appellants that in this case, an application under Section 156(3) Cr.P.C. was moved by the respondents against the appellants with allegation that there was *marpeet* and abuse with words relating to their castes by the appellants. Further submitted that there is civil suit between the parties regarding land on which there is appellants' drain which was being obstructed by respondents by force when objected by the appellants and matter was taken to the police station the proceedings under Sections 107, 116 and 151 Cr.P.C. were initiated by the police, later on present application was filed by the respondents under Section 156(3) Cr.P.C. with false allegation to make pressure on the appellants to allow them to continue the drainage on their land. The statements of the respondent under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C. were recorded but all of them are the members of same family. Learned court concerned did also not consider all these facts while passing the order dated 15.5.2023. There is no any medical report to support the allegation of *marpeet* by the appellants to the respondents except oral statement. Police report was called for by the learned court concerned when the application under Section 156(3) Cr.P.C. was filed in which the charges were not found to be established by the police but this fact was not taken into consideration by the learned court concerned, therefore, request to set it aside and allow the appeal.

Learned counsel for respondents as well as learned A.G.A. opposed the prayer and urged that in this case, there was dispute between the parties and both the parties do

not belong to the same family but are neighbours. There was dispute regarding drainage on the land which is being claimed by the appellants to be their own though it is owned by them. Appellants have blocked the drainage that was the reason there was dispute, they committed marpeet with the respondents and also abused with words relating to their caste in public place. Police did also not taken appropriate action that was the reason present application was filed before the learned court concerned. Learned court concerned considered all these facts and circumstances of the case and statement made by the complainant and other witnesses under Sections 200/202 Cr.P.C. and passed the order as aforesaid which cannot be said to be illegal but this appeal being devoid of merit, is liable to be dismissed.

On considering the facts and circumstances of the case, submissions made by learned counsel for both the parties as well as learned A.G.A. and perusal of record, the allegation made in the application under Section 156(3) and the statement of the complainant/respondent under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C, it appears that learned court concerned considered the material on record and passed the order as aforesaid. There is no any illegality or impropriety in the order in question but this appeal being devoid of merit is liable to be dismissed.

The appellants may file an application for discharge at appropriate stage before the learned court concerned which is to be disposed of in accordance with law on the basis of material on record.

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

However, it is directed that in case, the appellants appear and move bail application before the court concerned within a period of 30 days from today, it will be heard and decided expeditiously as far as possible in the light of case decided by Hon'ble the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another LL 2022 SC 577 decided on 11.07.2022.***

Order Date :- 7.12.2023

A. Singh