

Court No. - 80

Case :- CRIMINAL APPEAL No. - 6114 of 2023

Appellant :- Kaushal Rai And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Manjul Mishra, Amit Tripathi

Counsel for Respondent :- G.A., Ajeet Kumar Srivastava

Hon'ble Subhash Chandra Sharma, J.

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

This present criminal appeal has been filed with a prayer to allow the present criminal appeal and set aside the impugned order dated 24.03.2023 passed by the learned Special Judge SC/ST Act, Jaunpur, in Complaint Case No. 49/2019, Yashoda Devi Vs. Kaushal Rai and others, under Sections 323, 354, 452, 504, 506 I.P.C. & 3(1) Da, 3(1) Dha SC/ST Act, Police Station Gaurabad Shahpur, District Jaunpur.

It is submitted by learned counsel for the appellants that in this case the allegations made in the complaint are vague and false and not supported with any material on record. The complainant and other witnesses those were examined under Section 200 and 202 Cr.P.C. were partisan witnesses and are not reliable. On the basis of those statements summoning order was passed by the learned court concerned. Thereafter an application for discharge was moved under Section 227 Cr.P.C. before the learned court concerned which was decided without applying its judicial mind and it was rejected by order dated 06.08.2021. The plea taken by the appellants was not considered by the learned Special Judge. The contradictions in the statements of the complainant as well as other witnesses were also not considered. It is also submitted that there is civil litigation between the parties and to make pressure on the appellants this complaint with false allegations was filed against them even though this fact was not given importance by the learned court. It is also submitted that there is dispute relating to land between both the parties on account of which this complaint was filed. In this way, the order passed by learned court concerned on 24.03.2023 on an application cannot be said to be based on material on record and passed after application of judicial

mind, therefore, request to set it aside.

Learned counsel for the respondents as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case on the basis of allegation made in complaint, under Section 200 Cr.P.C. by the complainant and the statements as recorded under Section 202 Cr.P.C. by other witnesses were taken into consideration at the time of passing the order of summoning. From the statements a prima facie case is made out as a result summoning order was passed and thereafter no any such material was brought on record to show that the allegations and the statements as made before the learned court were false and unreliable. It is also not possible at this stage of discharge but it is possible only during trial. The statements made by witnesses cannot be discarded only on the ground of being relatives of the complainant. The learned court concerned passed the order dated 24.03.2023 after considering all the facts and circumstances and material on record. There is no any illegality or impropriety in the order but this appeal being devoid of merit is liable to be dismissed.

Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties as well as learned A.G.A. for the State, perusal of record, the order passed by learned court concerned in question in this appeal there appears no any illegality or impropriety in the order passed by the learned court. At the stage of considering on the point of discharge Court is to consider the material to form the opinion as to whether prima facie case is made out and even if there is strong suspicion about commission of offence, charge can be framed. Accordingly, there appears no ground to make interference in the order passed by learned court but this appeal being devoid of merit is liable to be ***dismissed***.

This appeal is hereby ***dismissed***.

Order Date :- 6.12.2023

Suraj Srivastav