

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7198 of 2023

Appellant :- Pradeep Tiwari And 4 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Dhirendra Babu Mishra

Counsel for Respondent :- G.A., Gulab Anand

Hon'ble Subhash Chandra Sharma, J.

Counter affidavit filed by learned counsel for the respondents is taken on record.

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 stay the further proceeding and also prays to set aside the impugned order dated 25.05.2022 passed by the Special Judge (S.C./S.T. Act), Kaushambi in Final Report No. 33 of 2020 S.T. No. 103 of 2022 (Nanki Devi Vs. Pradeep Tiwari and others) in Case Crime No. 413 of 2019, under Sections 147, 452, 323, 504, 506, 427 I.P.C. and 3(2)va of S.C. and S.T. Act, Police Station Pipari, District Kaushambi.

It is submitted by learned counsel for the appellants that in this case F.I.R. was registered on the basis of an order passed by learned court on an application under Section 156(3) Cr.P.C. During the course of investigation the incident was found to be false as a result final report was submitted by the police on which protest petition was filed by the informant which was considered by the learned court and by order dated 25.05.2022 the final report was rejected and summoning order was made straightaway on the basis of protest petition.

It is further submitted that Case Crime No. 274 of 2019 under Sections 147, 148, 149, 323, 504, 506, 427, 452, 395 I.P.C. was got registered against the family members of the informant regarding an incident dated 30.06.2019 in which after investigation prima facie case was found to be made out and charge sheet was filed by the police. For making pressure on the appellants present case was got registered with false allegations that is misuse of process of law. It is also submitted that no any material was found during the course of investigation by the I.O. to support the allegation as made by the informant in the application moved under Section 156(3) Cr.P.C. and the injuries were also not examined by the doctor promptly but after 15 days of the alleged incident she was medically examined and medical report was got prepared by manipulating the doctor. No any such case was found to be established against the appellants as a result final report was submitted but learned

court concerned did not consider the material on record but on the basis of a statement of injured Nanki Devi and witness Sarla Devi and the statement of the doctor passed the order in question without examining their veracity. In this way the order passed by the learned court concerned cannot be said to be based on material on record and in conformity with law, therefore it is liable to be set aside and appeal be allowed.

Learned counsel for the respondents as well as learned A.G.A. opposed the prayer as aforesaid and contended that in the cross case the incident was said to have taken place on 30.06.2019 and in the present case the incident is said to have taken place on the same day when Sangam Lal Tiwari who was assaulted by the appellants came into the house of the present informant to whom the informant tried to rescue on which the appellants assaulted her with kicks and fists causing injuries on her person. She moved an application before the police station concerned but no case was registered by the police and her medical examination could also not be done promptly because case was not registered at the police station. Later on, she was medically examined at district hospital on 15.07.2019 by the Medical Officer and five injuries were found on her person during medical examination and all were caused with hard and blunt object. In her statement the injured Nanki Devi supported the version as mentioned in the F.I.R. and Sarla Devi who was eye-witness of the incident also supported her version. Likewise the doctor conducting medical examination also supported the fact that at the time of examination he found injuries on the person of Nanki Devi and prepared medical report. Keeping in view all these facts, the statements of the witnesses the learned court concerned passed the order in question while rejecting the final report and summoning the appellants. There is no any illegality or impropriety in the order passed by learned Special Judge 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, it appears that, in this case there was a cross case registered as Crime No. 274 of 2019 by the appellants showing the incident to have taken on 30.06.2019.

The informant in this case Nanki Devi filed an application under Section 156(3) Cr.P.C. before the learned court concerned on which direction was made to lodge the F.I.R. In the course of investigation the statement of informant/ injured Nanki Devi was recorded in which she supported the version as mentioned in F.I.R. about assault made by the appellants causing injuries to her. Eye-witness Sarla Devi also stated before the I.O. about the commission of offence in which injuries were caused to Nanki Devi by the appellants. Likewise the statement of the doctor was also recorded by the I.O. who supported the injury report as prepared by him and also the injuries those were found on the person of the injured. At this stage the veracity of statement of the injured, eye-witness and the doctor cannot be tested and said to be false. On the basis of contradictions also it cannot be said to be unreliable but it is possible during trial. Learned court concerned also took in consideration all these facts while passing the order in question, therefore it cannot

be said to be against the facts and law but this appeal being devoid of merit is illegal to be ***dismissed***.

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

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

Order Date :- 8.12.2023

Suraj Srivastav