

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6464 of 2023

Appellant :- Chandresh Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Saurabh Kumar Pandey

Counsel for Respondent :- G.A., Ramesh Chandra Yadav

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

Heard the learned counsel for the appellant, learned counsel for the opp. party no. 2 and perused the record.

This appeal has been preferred against the order dated 7.4.2023 passed by learned Special Judge SC/ST Act, Azamgarh, in S.T. No. 147 of 2022, State Vs. Chandresh Yadav, under sections 323, 504 I.P.C. and section 3(1) r and 3(1) s of SC/ST Act, police station Mehnagar, District Azamgarh. By the impugned order the discharge application of the appellant/applicant was rejected.

As per the facts of the case, an application under section 156(3) Cr.P.C. was moved by the opp. party no. 2 Panna Lal against the appellant and 4 other persons with the version that he was a driver of the vehicle of the present appellant. Rs. 15,000/- regarding his services were due towards appellant Chandresh Yadav. As opp. party no. 2 used to demand his money, Chandresh Yadav developed enmity with him and when on 8.7.2021 at 6.00 a.m. when the opp. party no. 2 went to demand his dues from the appellant, the appellant and 4 other persons named in the application hurled caste based words, wild abuses and thrashed him with baton, stick, kick and blow. Opp. party no. 2 sustained injuries. The villagers gathered there and saved him. Opp. party no. 2 was given threat of life also. His motorcycle was detained by Chandresh, the appellant. The report of opp. party no. 2 was not written in the police station. He is unable to contest the private case, hence, the prayer was made accordingly.

The application u/s 156(3) Cr.P.C. of opp. party no. 2 was treated as complaint and after recording the statements of the complainant and his witnesses u/s 200 and 202 Cr.P.C. respectively, out of 5 named persons only the appellant was summoned by the trial court to face trial under the aforesaid sections.

It is submitted by the learned counsel for the appellant that against the summoning order also he had approached this court and he was directed by this court to move a discharge application before the trial court. Vide impugned order dated 7.4.2023, the discharge application of the appellant has been rejected by the trial court.

It is argued by the learned counsel for the appellant that earlier on 1.7.2021 regarding the incident dated 23.5.2021, the appellant had lodged an FIR against opp. party no. 2 under sections 354 and 452 I.P.C. wherein after investigation chargesheet has been filed against the opp. party no. 2 and he is also bailed out by the trial court in that case. Just after lodging the FIR by the appellant on 1.7.2021 only after 18 days on 19.7.2021, this application u/s 156(3) Cr.P.C. was moved by opp. party no. 2 on totally false allegations. Hence, the prayer is made to set aside the order dated 7.4.2023.

Learned counsel for opp. party no. 2, however, opposed the prayer and submitted that on the basis of the evidence on record, the trial court found prima facie case to frame charge against the appellant and the discharge application of the appellant was rightly rejected by the trial court.

From the perusal of the record, it is found that there is allegation that when opp. party no.2 approached the appellant to demand his dues of Rs.15,000/-, he was thrashed at the hands of the appellant and other 4 persons. He was hurled wild abuses, caste based words were used against him and he was thrashed at the hands of the appellant. The injury report of opp. party no. 2 dated 8.7.2021 is on record, wherein 7 injuries are found on the person of opp. party no. 2. All the injuries are found to be caused by hard and blunt object. Injury nos. 1 to 4 were found simple and regarding injury nos. 5, 6 and 7, x-ray was advised and the injuries were kept under observation. No supplementary report in this regard has been placed before the court. However, the summoning of the appellant is under sections 323, 504 I.P.C. and section 3(1) r and 3(1) s of SC/ST Act and the discharge application under these sections only has been rejected by the trial court. On the basis of the injury report and the statements u/s 200 and 202 Cr.P.C. of the complainant and his witnesses respectively, prima facie a case under sections 323 and 504 I.P.C. can be said to be made out for framing charge against the appellant but so far as the charge under section 3(1) r and 3(1) s of SC/ST Act is concerned, in complaint itself it is mentioned that the appellant is said to have hurled wild abuses and caste based words against opp. party no. 2 because the appellant did not want to pay the due amount of opp. party no. 2.

Thus, the reason of uttering caste based words was not that opp. party no. 2 belongs to SC/ST community but it was because that the appellant was not ready to pay the dues of the opp. party no. 2.

The Apex Court in judgment ***Hitesh Verma Versus The State of Uttarakhand and Another, Criminal Appeal No.707 of 2020 (arising out of SLP (Criminal) No.3585 of 2020***, dated **05.11.2020** held that an offence under the Act of SC/ST is not established merely on the facts that the informant is a member of scheduled caste unless there is intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste only.

In the light of the above judgment (supra), prima facie also the offence of using caste based words punishable under SC/ST Act cannot be said to be made out against the opp. party no. 2, hence, rejection of discharge application with regard to sections of SC/ST Act is against the law laid down by the Apex Court in the above mentioned judgement.

Thus, the impugned order is confirmed with regard to rejection of discharge application under sections 323 and 504 I.P.C. but the impugned order regarding the rejection of discharge application under sections 3(1) r and 3(1) s of SC/ST Act is set aside.

The appeal is, thus, allowed partly.

Order Date :- 21.11.2023

Gss