

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7189 of 2023

Appellant :- Bablu Kesarwani @ Ram Kumar Kesarwani

Respondent :- State of U.P. and Another

Counsel for Appellant :- D.C. Dwivedi, R S Dubey, Shashi Dhar Dwivedi

Counsel for Respondent :- G.A.

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

Learned counsel for the appellant filed rejoinder affidavit to the counter affidavit filed by the learned A.G.A., let it be kept on record.

Heard learned counsel for the appellant, learned A.G.A. and perused the record.

No one has put in appearance for opposite party no.2 despite of sufficient service.

This is an appeal filed against the cognizance order dated 05.09.2022 passed by the Special Judge, SC/ST Act, Allahabad in Case Crime N.184 of 2022, under Sections 323, 504, 506 IPC and Section 3(2) (va) of SC/ST Act, Police Station George Town, District Allahabad.

By impugned order, the trial court took cognizance under Sections 323, 504, 506 IPC and Section 3(2) (va) of SC/ST Act against the appellant.

It is argued by the learned counsel for the appellant that in the FIR dated 25.05.2022 the incident is shown to be dated 13.05.2022 and no explanation has been offered regarding this inordinate delay. Though, in the FIR four persons are named while in the additional statement of the first informant/ opposite party no.2- Gaurav he has named only the appellant committing the offence. In fact, the first informant is a drunkard person habitual of having liquor and other noxious substances. On the date of incident also, in an inebriated condition he has creating nuisance in front of the shop of the appellant. He was hurling abuses. Girdhari Lal, who is the shopkeeper of the shop in front of the shop of the appellant resisted. Girdhari Lal was pushed and thrashed by Gaurav. He

(appellant) went only to rescue Girdhari Lal. There Gaurav caught hold of his collar. The appellant fell down on Gaurav, who gave threat of implicating him in false case of SC/ST Act. Gaurav is a miscreant type of person, who demands extortion from the persons and when the money is not given, he is habitual of creating such type of nuisance. Again the attention of the Court is drawn towards the FIR lodged by Girdhari Lal on 28.05.2022 regarding the same incident dated 12.05.2022, wherein the first informant/ opposite party no.2 in an inebriated condition on 12.05.2022 at 8:30 PM is said to have hurled wild abuses to various shopkeepers and when he was resisted he was said to have pelted stones. There is also allegation that Girdhari Lal was thrashed at the hands of opposite party no.2, given threat of life and also a threat of implicating him in false case of SC/ST Act. On the same night, the opposite party no.2 is said to have put on fire the shop, posters and banners of Girdhari Lal causing him heavy loss. The report of Girdhari Lal was not written. On 24.05.2022 also, Ashish, the son of Girdhari Lal was abused and assaulted with brick by the opposite party no.2 and his companions when they were under the effect of smack. As the appellant helped Girdhari Lal he is said to have been falsely implicated in the case. Further, the attention of the Court is drawn towards the difference of date of the incident in the FIR and in the statement of the first informant, wherein in the FIR the incident is shown to be dated 13.05.2022 while in the statement of the first informant this date is disclosed to be 12.05.2022 and later on, the investigating officer has also corrected the date of the incident in the FIR as 12.05.2022 in place of 13.05.2022, thus, it becomes very much clear that regarding incident dated 12.05.2022 Girdhari Lal and first informant both have lodged FIRs. Girdhari Lal had lodged an FIR against opposite party no.2 and opposite party no.2 has lodged this FIR against the appellant. It is further submitted that no independent witness has supported the prosecution version. There is no eye witness of the incident, hence, the prayer is made accordingly.

Learned A.G.A., however, opposed the prayer and submitted that on the basis of the statements of the first informant and the parents of the first informant and the evidence on record after investigation the investigating officer has filed charge-sheet against the appellant, hence, the prayer is made to dismiss the appeal.

By impugned order, the trial court took cognizance against the appellant under Sections 323, 504, 506 IPC and Section 3(2) (va) of SC/ST Act on the basis of the charge-sheet filed against the appellant. Certainly at the time of passing cognizance order, the

FIR filed by Girdhari Lal was not before the trial court. The trial court had only the evidence before it collected by the investigating officer in the case. The first informant and his parents in their statements have supported the version of the FIR. So far as the cognizance under Sections 323, 504, 506 IPC is concerned, the appellant can move a discharge application before the trial court putting the above facts before that court. So far as the cognizance under Section 3(2) (va) of SC/ST Act is concerned, as per version of FIR the allegation is that when the opposite party no.2 showed urgency of medicine for his mother he was hurled caste based words and was thrashed at the hands of the appellant and other co-accused persons. The cause of altercation between the parties is shown the hurry on the part of the opposite party no.2, while asking for the medicines. There is nothing in the FIR that these caste based words were used by the appellant with intent to humiliate the opposite party no.2 because of his being a member of scheduled caste or scheduled tribe community.

Thus, as per the mandate laid down by the Apex Court in ***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***, as the caste based words are said to have hurled by the appellant because the opposite party no.2 was demanding the medicines urgently, the offended words cannot said to be hurled because the opposite party no.2 belonged to the SC/ST community. The cognizance under Section 3(2) (va) of SC/ST Act is against the mandate laid down by the Apex Court in the above judgment.

Hence, the appeal is **allowed** partly. The cognizance order dated 05.09.2022 is set aside with regard to cognizance under Section 3(2) (va) of SC/ST Act and it is confirmed with regard to cognizance under Section 323, 504, 506 IPC. However, regarding sections of IPC the appellant can move a discharge application before the trial court and if he moves a discharge application, the trial court is directed to decide the same within two months from the date of moving the discharge application before the trial court.

Order Date :- 21.11.2023

Radhika