

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6563 of 2023

Appellant :- Vijay Kumar Upadhyay And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Saurabh Kumar Pandey

Counsel for Respondent :- G.A., Shiva Shanker Yadav

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

Rejoinder affidavit filed today is taken on record.

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

This appeal is preferred against the order dated 3.12.2022 passed by Special Judge SC/ST Act/ Addl. Sessions Judge II, Bhadohi. By the impugned order cognizance was taken against the appellants under sections 406, 420, 504, 506 I.P.C. and 3(1)(r)(s) of SC/ST Act, in S.T. No. 496 of 2022, State Vs. Vijay Kumar Upadhyay, arising out of case crime no. 197 of 2022, police station Suriyawan District Bhadohi.

As per the facts of the matter, an FIR was lodged by the opp. party no. 2 against all the three appellants and 2-3 unknown persons on 9.9.2022 with the version that on 17.12.2021 the first informant had executed an agreement to sale in favour of the appellants regarding the property no. 935 measuring 0.109 hectare, wherein she was the owner of 0.025 hectare land. A cheque of Rs. 15 lacs was shown to her but it was never handed over to her. On 23.2.2022 a sale deed was executed and again same cheque of Rs. 5 lac was shown to her but nothing was paid to her. She has filed a case for cancellation of the sale deed and as a result of this enmity on 31.8.2022 all the three appellants along with 2-3 unknown persons came to her house hurled caste based abuses and asked her to vacate the house in dispute, otherwise she was given threat of life.

It is argued by the learned counsel for the appellants that regarding the incident dated 31.8.2022 an FIR has been lodged on 9.9.2022 and this inordinate delay of 9 days has not been explained by the opp. party no. 2. As per the version of the FIR, the incident is said to have taken place inside the house, the same is proved from the

site plan hence section 3(1)(r)(s) of SC/ST Act do not apply to the matter. It is again argued that in exchange of one land shown sold by the opp. party no. 2 in favour of the appellants, two lands were transferred by way of sale deed in favour of the opp. party no. 2, so no question of any due payment arises. It is further argued that with regard to the matter the appellants had moved an application before Station House Officer concerned on 4.9.2022 and an application was also sent by a registered post to Circle Officer of the area concerned on 5.9.2022, receipt of the same is appended with the paper book so they have been falsely implicated. Hence, the prayer is made accordingly.

Learned counsel for the opp. party no. 2 opposed the prayer and submitted that even after execution of the sale deed, the amount mentioned therein was not paid to opp. party no. 2 and because of this only the opp. party no. 2 had to file a civil suit regarding cancellation of the sale deed. As a result of this enmity only the incident dated 31.8.2022 took place.

If we go through the application moved by the appellants to Station House Officer concerned and Circle Officer, it is very well mentioned therein that with regard to the sale deed full consideration has been paid to the opp. party no. 2 and the same version is in the sale deed also that the whole consideration has been paid to the opp. party no. 2. While before this court the argument is being placed that in exchange of one property sold by the opp. party no. 2 to the appellants, two small properties in exchange were transferred to the opp. party no. 2 by the appellants. Both sale deeds are found appended with the paper book. Thus, the argument advanced by the learned counsel for the appellants is contradictory whether as per the endorsement in the sale deed the whole consideration was paid to the opp. party no. 2 or in exchange of one property, two properties were transferred by the appellants to the opp. party no. 2. Anyway it is admitted fact that a civil suit regarding the cancellation of the sale deed filed by the opp. party no. 2 is pending before the competent court and it is the version of the opp. party no. 2 in the FIR that because of the enmity of that civil suit only the incident dated 31.8.2022 had taken place that all the appellants came to her house and gave her threat to vacate the house, she was hurled caste based abuses and threat of life was also extended. Though in the FIR, it is the version that the appellants came to the house of the first informant and committed the above mentioned offence but in the site plan the place of the occurrence is shown out side the house of the opp. party no. 2 i.e. the door steps of the opp. party no. 2. Whether the

caste based word were hurled inside the house or on the door of the house this fact shall be decided by the trial court after the evidence of the parties. The allegations of hurling caste based abuses, giving threat of life if she does not vacate the house as mentioned in the FIR have been supported by the first informant in her statement under section 161 Cr.P.C. The property dispute between the party is an admitted fact. On the basis of the statements recorded and the evidence collected by the Investigating Officer, the charge sheet has been filed against the appellants and on the basis of this chargesheet only, the trial court has taken cognizance against the appellants.

The dispute between the parties is admitted. Though the civil dispute cannot be converted into a criminal dispute but when there is clear allegation of committing offence as has been mentioned in the FIR and the FIR version is supported with the evidence, further the charge sheet on the basis of the evidence has been filed by the Investigating Officer, at this stage, I find no good ground to interfere with the impugned cognizance order/ chargesheet. The appeal lacks merit and is liable to be dismissed.

Appeal is accordingly dismissed.

Order Date :- 7.11.2023

Gss