

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6663 of 2023

Appellant :- Bijendra Singh And 2 Other

Respondent :- State of U.P. and Another

Counsel for Appellant :- Himanshu Mishra

Counsel for Respondent :- G.A.,Dinesh Kumar Singh

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

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

This is an appeal against the order dated 31.05.2023 passed by the Special Judge (SC/ST Act), Mathura in Special Complaint Case No. 29 of 2020 (Smt. Rekha Vs. Bijendra Singh and others) under Sections 323, 504, 506, 354 IPC and 3(1)Da, Dha of SC/ST Act, Police Station Govindnagar, District Mathura.

By the impugned order the trial court summoned all the appellants to face trial under Sections 323, 504, 506, 354 IPC and 3(1)Da, Dha of SC/ST Act.

As per facts of the case, an application under Section 156 (3) Cr.P.C. was moved by the opposite party no. 2 against all the three appellants that her husband - Rajan Singh is Class-IV employee in D.A.V. Inter College, Masani, Mathura. On 14.09.2020 at 6.15 a.m. her husband had gone to the college on duty. At 8.00 a.m. she got an information that her husband was badly thrashed at the hands of the officials of the college and was lying outside the college in injured condition. The opposite party no. 2 along with her 12 years old daughter reached there and found her husband sitting by the road side, who was having injury marks on his body. Her husband disclosed that at 6.45 a.m. he reached at the college and put his thumb impression in bio-metric machine and asked for register for signature but Dr. Bijendra Singh, Principal of the college, abused him and expelled him from his office.

When Rajan Singh was present in the college premises, Principal Dr. Bijendra Singh, teacher Dhruv Singh and official Baldev Singh came equipped with baton and started thrashing Rajan Singh. They hurled wild abuses and humiliated him by using caste based words. To save himself Rajan Singh ran towards gate of the college. All

the three accused persons chased him up to the road. Rajan Singh was saved by the passers-by, who saw the incident. The first informant came to the Principal along with her daughter and prayer to let her husband do the job there. But both were hurled wild abuses. All the three accused persons acted obscene, molested her and expelled them from the college. She went to the police station Govind Nagar along with her husband where her report was not written. She got her husband medically examined. The registered application was sent to the SSP on 07.09.2020 but no action was taken.

This application under Section 156(3) Cr.P.C. was registered as complaint and after the statement of the complainant under Section 200 Cr.P.C. and the statements of witnesses under Section 202 Cr.P.C. and after going through the inquiry report the trial court passed the impugned order and summoned the appellants.

It is argued by the learned counsel for the appellants that before passing the summoning order on the direction of the trial court the inquiry was done by the police and the inquiry report was submitted, which is appended at page-26 of the rejoinder affidavit. The Inquiry Officer after recording the statements of the witnesses found the incident to be false but the trial court ignoring this inquiry report has passed the impugned order, which is liable to be set aside.

The attention of the court is drawn towards the FIR dated 27.08.2020 regarding incident dated 15.08.2020 lodged by the appellant – Bijendra Singh against opposite party no. 2 – Smt. Rekha and her husband, wherein after investigation charge sheet is said to have been filed against both the named accused persons.

Again the attention of the court is drawn towards page-12 of the paper book, according to which on 13.02.2021 regarding incident dated 11.02.2021 the appellant – Bijendra Singh lodged an FIR against the Rajan Singh under Sections 186, 504 & 506 IPC. In this matter also on 19.04.2021 the charge sheet is said to have been filed by the Investigating Officer.

It is, however, argued that the incident committed inside the college does not come within the public view. Hence, the offence under sections of SC/ST Act cannot be said to be made out against the appellants.

It is also argued that there are contradictions in the statements of the victim and his wife – opposite party no. 2 and also in the

version of the complaint and the statements of the witnesses. As per complaint, the victim was found sitting by the road side when his wife reached at the college, while in the statement of the victim it has come that being thrashed at the hands of the appellants he got unconscious and fell down outside the college. His wife came and brought him back into his senses. In the complaint, it has come that the appellants acted obscene and molested the first informant, while the first informant in her statement has stated that she was assaulted on her chest by the appellant – Bijendra Singh and she fell down on the ground. Witness – Ashok has not supported this version that the first informant was molested at the hands of the appellants.

It is argued that as the FIR under Section 354 IPC was filed against Rajan Singh, husband of opposite party no. 2, he was absconding and did not attend the college so, he was not permitted to join later. Though, he moved various applications in this regard and because of this grudge only this false complaint has been lodged against them. There was no intention to commit the crime against Rajan Singh. There is no motive for the appellants to commit the offence. Hence, prayer is made accordingly.

Learned counsel for the opposite party no. 2 opposed the prayer and submitted that the husband of opposite party no. 2 – Rajan Singh was not being permitted to join his services. On behest of Dr. Bijendra Singh a false FIR under Section 354 IPC was lodged against the husband of the opposite party no. 2, wherein after the statements of the alleged victim and her husband the final report was submitted. This final report has been admitted by the court. The order in this regard has been placed before the court. Again the attention of the court is drawn towards page-25 of the supplementary affidavit that the opposite party no. 2 had moved an application on 08.02.2021 that she had apprehension from the appellants to implicate them in the false case.

The attention of the court is also drawn towards the injury report dated 07.09.2020 of injured Rajan Singh and it is alleged that these injuries were inflicted by the appellants at the time of incident.

It is further argued that the incident took place within the public view. The incident is supported by the statements of the complainant under Section 200 Cr.P.C. and the witnesses under Section 202 Cr.P.C. Hence, prayer is made accordingly.

From perusal of the record, it is found that there is dispute between the parties regarding joining of service by the husband of the

opposite party no. 2. It is the case of the appellants that the husband of opposite party no. 2 remained absent for a long period so he was not being permitted to join the college. This fact is supported by the documents on record that the husband of the opposite party no. 2 was making prayers by moving applications for payment of his salary and for permission to join his service.

So far as the impugned FIR and impugned order are concerned, in the complaint, appended at page-35 of the paper book, there is allegation of thrashing, hurling caste based words and wild abuses by the appellants. Again there is allegation of acting obscene and molestation against the appellants. The trial court by passing the impugned order found that the incident was supported by the statements of the complainant and the witnesses under Sections 200 and 202 Cr.P.C. respectively. The trial court opined that in the inquiry report submitted by the police it has come that the facts of the incident have been exaggerated by the opposite party no. 2, which shows that some incident took place on that fateful day. The trial court also found that the appellants are powerful persons and inquiry report has been filed by the police under their influence. The court opined that the enquiry report would be considered after the evidence of the parties and thus, passed the impugned order.

Admittedly, all the FIRs placed before the court by the appellants were not before the trial court at the time of passing the impugned order. However, it is argued that the inquiry report submitted by the police was before the trial court at the time of passing the order, whereby the police did not find any supporting evidence confirming the incident. In the statement mentioned in the report, it has been found that on the date of incident i.e. 07.09.2020 Rajan Singh, husband of opposite party no. 2 had not visited the college and as he did not appear in the college on that day, so the question of any incident does not arise.

Certainly, on the basis of statements recorded by the Inquiry Officer, the Inquiry Officer found the incident to be false but it is true that all the statements recorded by the Inquiry Officer are the statements without oath, while the statements recorded before the trial court under Sections 200 and 202 Cr.P.C. in support of the complaint are on oath statements of the victim and his witnesses. For summoning a person only a prima-facie case is to be proved before the trial court and the trial court on the basis of on oath statements of the complainant and her witnesses including the injured person found a prima-facie case to summon the appellants to face the trial. As the documents placed before this court regarding dispute between the parties were not available before the

trial court, the trial court was not in a position to go through those documents and reach at the definite conclusion. Certainly the appellants have an opportunity to appear before the trial court and put their cases before the court.

In the opinion of the court, as the impugned order has been passed on the basis of evidence placed before the court so no infirmity is found in the impugned order.

Thus, the appeal is dismissed.

However, the appellants are free to move a discharge application before the trial court. In case, the discharge application is moved by the appellants, the trial court shall dispose of the discharge application of the appellants within two months from the date of moving the same.

Order Date :- 21.11.2023

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