

Court No. - 80

Case :- CRIMINAL APPEAL No. - 3872 of 2018

Appellant :- Shankar Lal

Respondent :- State of U.P.

Counsel for Appellant :- Avanish Pratap Singh, Udai Bhan Singh

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

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

This criminal appeal has been filed by the appellant with prayer to quash the order dated 7.5.2018 in S.T. No. 31 of 2018 arising out of Case Crime No.186 of 2018, pending in the court of Additional District and Session Judge, Hathras, under sections 504 I.P.C and Section 3(2) 5a S.C./S.T. Act, Police Station Hathras Kotwali, District Hathras.

It is submitted by learned counsel for the appellant that in this case, the appellant was not named in the F.I.R which was lodged under sections 363, 366, 376, 504 I.P.C and Section 3(2)(5) SC/ST Act and Section 4 POCSO Act against Amit Kushwaha. Being father of Amit Kushwaha, the present appellant was also charge sheeted by the Investigating Officer only on the basis of statement of mother of the victim which was recorded during investigation and related to the abuse regarding her caste, though no any such incident took place between the appellant and mother of the victim. It is further submitted that after conclusion of trial co-accused Amit Kushwaha has been acquitted by learned court and now there is summoning order against the present appellant by the learned court only on the basis of statement of the mother of the victim which cannot be said to be reliable but it was made only for the harassment of the appellant. Therefore, request to set aside the order passed by learned court concerned for cognizance of offence and summoning against the appellant.

On the other hand, learned AGA opposed the prayer as aforesaid and contended that the statement of the victim and her mother as recorded before the learned trial court in the trial of Amit Kushwaha cannot be said to be relevant at this stage and cognizance of the offence is to be taken only on the basis of material collected during investigation of the case by the Investigating Officer. During investigation, the statement of the mother of the victim was recorded on which she made the

allegation against the present appellant regarding harassment by using word relating to her caste as a result prima facie case was found to be made out and cognizance was taken by the learned court after submission of charge sheet. In pursuance thereto summoning order in question was passed which cannot be said to be unlawful and not on the material on record but this criminal appeal being devoid of merit is liable to be dismissed.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties and perusal of record as well as order passed by learned Special Judge S.C./S.T. Act, there appears no any error of fact or law in the order but it is lawful and appropriate, it warrants no interference by this Court as a result this appeal being devoid of merit, is liable to be dismissed.

Accordingly, the present appeal is ***dismissed***.

However, it is directed that in case, the appellant appears and moves bail application before the court concerned within a period of 30 days from today, it will be heard and decided expeditiously as far as possible in the light of case decided by Hon'ble the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another LL 2022 SC 577 decided on 11.07.2022.***

Order Date :- 30.11.2023
G.S