

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6707 of 2023

Appellant :- Smt. Seema Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Pankaj Kumar Tripathi

Counsel for Respondent :- G.A.,Nikhil Tandon

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

Heard learned counsel for the appellant, Sri Pawan Kumar holding brief of Sri Nikhil Tandon for the opp. party no. 2 and perused the record.

This appeal has been preferred against the cognizance order dated 5.8.2021 passed by Special Judge SC/ST Act, Mathura in Special Sessions Case No. 989 of 2021, State Vs. Seema Singh, arising out of case crime no. 305 of 2020, police station Baldev District Mathura.

By the impugned order the trial court took cognizance under sections 504, 506 I.P.C. and sections 3(1) r, s of SC/ST Act against the appellant.

As per the facts of the case, an FIR was lodged by the opp. party no. 2 on 7.10.2020 at 23.34 hours against 4 persons including the appellant and two unknown persons that since 23.9.2015 the first informant was working in Samviliat Vidyalaya Burj Tula, Baldev, Mathura. On 29.9.2020 when she came to the school and was sitting in a room, the appellant came and started using filthy words to the first informant and when she was resisted, she tried to snatch her mobile phone, thrashed her, pulled her hair, scratched her face with the nails and banged her head against the wall. The other staff Ajay Parihar caught hold of her. This incident took place with the connivance of the whole staff of the school. The whole staff assisted the appellant Seema in thrashing the opposite party no. 2. Seema tore her clothe also with the intention to molest her. The staff of the school do not come to the school regularly that too in time, but as she is a punctual teacher and comes in time so the whole staff has grievance against her. When she came to the school, the staff of the school did not permit her to put signatures on the attendance register. On the date of the incident after coming to the school she informed of her presence to 'Khand Shiksha Adhikari' on whatsapp. She had fear of her life from the accused persons. On the basis of this FIR after investigation chargesheet was filed against the present appellant under sections 504, 506 I.P.C. and section 3(1) r,s of SC/ST Act.

The main grievance to the appellant is with regard to sections of SC/ST Act that in the whole FIR and also in the statement u/s 161 Cr.P.C., there is not even a single allegation regarding offence under sections of SC/ST Act against the appellant. It

is also argued that none of the witness supported the allegation regarding offence under SC/ST Act. The witnesses mentioned in the FIR have refused their presence on the spot at the time of incident. Regarding the incident dated 29.9.2020, the FIR has been lodged on 7.10.2020. Regarding this delay no explanation has been offered by the opp. party no. 2.

Learned counsel for the opp. party no. 2 opposed the prayer and submitted that the discharge application of the appellant has also been rejected by the trial court and the order has been passed to frame charge under sections 504, 606 I.P.C. and Section 3(1) r, s of SC/ST Act by the trial court.

From the perusal of the record, it is found that this appeal has been preferred against the cognizance taking order dated 5.8.2021 and the discharge application of the appellant is also said to have been rejected by the trial court on 30.9.2023.

As this appeal is preferred against the cognizance taking order only, hence the court has to confine to the order dated 5.8.2021 only.

From the FIR, it is clear that there is allegations against the appellant of thrashing the first informant, snatching her mobile phone, banging her head against the wall, tearing her clothes and the first informant was facing fear of her life from the appellant. The chargesheet has only been filed against the appellant under sections 504, 506 I.P.C. and sections 3(1) r, s of SC/ST Act.

If we go through the statements of the witnesses on record, all the witnesses Saurabh Singh, Ajay, Ram Gopal, Sadhna, Seema wife of Vijendra Singh, Nitesh wife of Yashpal and Janak have accepted the physical altercation between the appellant and opp. party no. 2 on the date of the incident. The opp. party no. 2 in the FIR and in her statement under section 161 Cr.P.C. has made the version of thrashing her at the hands of the appellant, using filthy words by her and that the first informant was having fear of her life from the appellant. Neither in the FIR nor in the statements of the witnesses it has come that the caste based words were used by the appellant against the first informant that too with the intention of humiliating the opp. party no. 2 because of the first informant being a member of scheduled caste/ scheduled tribes community. In the statement of the first informant under section 161 Cr.P.C. dated 12.10.2020 for the first time after about 13 days of the incident, it has come that all the staff members used caste based words against the first informant. On the date of the incident also all of them were using caste based words but neither the name of any specific person has been pointed out in her statement as to who used the caste based words against the first informant nor it has come before the court that what were the caste based words used against the first informant. In the opinion of the court, the trial court while taking cognizance has not noted down its satisfaction as to on what basis the cognizance was taken u/s 3(1) r, s of SC/ST Act against the applicant.

On the basis of the above discussions, it is found that the order dated 5.8.2021

taking cognizance u/s 3(1) r, s of SC/ST Act has been passed against mandate of the Apex Court in the 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** wherein it is held that the offence under the Act of SC/ST is not established merely on the facts that the informant is a member of scheduled caste/ ST community unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

Therefore, the cognizance order dated 5.8.2021 above is confirmed with regard to cognizance under sections 504 and 506 I.P.C. and it is set aside with regard to cognizance under section 3(1) r, s of SC/ST Act.

The appeal is thus partly allowed.

Order Date :- 9.11.2023

Gss