

Court No. - 80

Case :- CRIMINAL APPEAL No. - 6720 of 2023

Appellant :- Smt Prema Devi

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Manoj Kumar

Counsel for Respondent :- G.A.,Rajnish Sahai Saxena,Ram Bahadur

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the appellant, learned counsel for the respondents as well as learned A.G.A. and perused the material on record.

This present criminal appeal has been filed with a prayer to allow the present criminal appeal and set aside/ quash the impugned order dated 22.05.2023 passed by Special Judge (S.C./S.T. Act), Gorakhpur in Criminal Misc. Case No. 366 of 2022 (State through Prema Devi Versus Ashish Srivastava and others) under Section 156(3) Cr.P.C. relating to Police Station Gorakhnath, District Gorakhpur and also prays to pass order afresh and appropriate.

It is submitted by learned counsel for the appellant that in this case there was a dispute relating to possession of land between the appellant and the respondents regarding which a complaint was also made by her to the police but no action was taken. On 08.05.2022 the respondents came on the place of dispute and started throwing the luggage of the appellant on road and also abused her by using words relating to her caste and also molested and made assault. On her cry several persons assembled there and made interference. She was also threatened by the respondents. Regarding incident information was given to the police station Gorakhnath but no action was taken as a result on 09.05.2022 she sent the information to S.S.P. Gorakhpur through registered mail and also filed a complaint online on I.G.R.s. but no action was taken at all, then she moved an application under Section 156(3) before the learned Special Judge S.C./S.T. Act on which an order dated 22.05.2023 was passed by the learned Judge without considering the allegations in the application but holding that the application was moved for giving colour of criminal case to the

civil dispute between the parties, therefore the application was not maintainable and she was to make request before the competent court regarding possession.

It is further submitted that learned court concerned was to consider only the allegations made in the application under Section 156(3) Cr.P.C. but the veracity of the statements cannot be examined at that stage. Beyond the facts as mentioned in the application learned court can not make presumption regarding dispute between the parties. In case prima facie case is made out from the facts of the case he is obliged to get the case registered for investigation or if it does not require any investigation by the police it may be treated as complaint. On the other hand if the allegations made in the application appears to be false and frivolous then the application can be rejected on merit but it cannot be rejected as non-maintainable. In this way, the order passed by the learned court concerned dated 22.05.2023 cannot be said to be lawful and based on the material on record as a result it is liable to be set aside and appeal to be allowed.

Learned counsel for the respondents as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case he filed photocopy of registered sale deed and a complaint made to police by them regarding dispute of possession related to that very land in which the possession of the respondents is being hampered by the appellant which shows that on account of civil dispute between the parties this application was filed by the appellant only to give it colour of criminal case. This fact was kept in view by the learned court concerned and order in question was passed. There is no any illegality or impropriety in the order but this appeal being devoid of merit is liable to be dismissed.

Considering the facts and circumstances of the case, submissions made by learned counsel for both the parties as well as learned A.G.A. for the State, including an application moved under Section 156(3) Cr.P.C. and the order passed thereon on 22.05.2023, it appears that in the application the allegations were made by the appellant that on 05.05.2022 the respondents started taking possession of her land and also threw the luggage on road. She was also beaten by them regarding which she informed the police but no action was taken. Subsequently, on 08.05.2022 the respondents came there and again threw the luggage of the appellant on road and made assault with molestation and use of words relating to her caste in this way they insulted her. She again informed the police but no F.I.R. was lodged. She sent information by registered post to S.S.P. on 09.05.2022 and also sent it online on I.G.R.S. even

though no action was taken by the authorities, as a result she moved present application under Section 156(3) Cr.P.C. The appellant belonged to Scheduled Caste and the respondents were members of other caste than S.C./S.T. There are allegations of assault, molestation and insult by use of words relating to her caste by the appellant in the application. At this stage while considering the application under Section 156(3) Cr.P.C. the court is to consider as to whether prima facie/ cognizable case is made out from the facts as mentioned in the application then it is either to get registered for investigation at the police station or treat it as complaint unless the allegations seem to be false and frivolous in the application but the court cannot decide the application beyond the facts mentioned in the application on the basis of presumption. The order dated 22.05.2023 shows that the learned court concerned did not consider the allegations as made under Section 156(3) Cr.P.C. but rejected it as non-maintainable on the ground that there was dispute relating to possession of land, therefore it was moved for the purposes of giving colour of criminal case to a civil matter. This finding as recorded by learned court concerned cannot be said to be based on the facts of the case and the law. Therefore it cannot be said to be passed in conformity with law and cannot sustain, as a result the order passed by learned Special Judge dated 22.05.2023 is hereby set aside and appeal is **allowed** with direction to the learned court to pass the order afresh based on the material on record in accordance with law.

Order Date :- 7.12.2023

Suraj Srivastav