

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6874 of 2023

Appellant :- Priti Mishra And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Onkar Nath, Darwari Lal, Santosh Singh

Counsel for Respondent :- G.A.

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

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

This is an appeal filed against the order dated 17.02.2023 passed by the Special Judge, SC/ST Act, Bareilly in Complaint Case No. 4017962 of 2021 - Ram Lakhan Vs. Priti Mishra and others, under Sections 323, 504, 506, 427, 379 IPC and Section 3(1)Da, Dha of SC/ST Act, Police Station C.B. Ganj, District Bareilly.

By the impugned order the appellants were summoned by the court concerned to face the trial under Sections 323, 504, 506, 427, 379 IPC and Section 3(1)Da, Dha of SC/ST Act.

As per facts of the case, the application moved by the opposite party no. 2 under Section 156 (3) Cr.P.C. was registered as a complaint. In this complaint, it was alleged that the opposite party no. 2 is resident of V-3, Asra Colony, Police Station C.B. Ganj, Bareilly. The appellants are said to be staying in the house No. R-9, R-11 and V-4 of the same colony after encroaching upon the house by breaking locks of these houses. They were said to be habitual of encroaching upon the houses accordingly. On 25th July, 2021 when the opposite party no. 2 resisted the appellants in breaking the lock of House No. V-4, he was hurled caste based words. His report was not lodged in the police station concerned. Because of this enmity only on 28th July, 2021 at 7.00 p.m. when the opposite party no. 2 was going for some important work her mother was also following him, the appellant - Priti Mishra thrashed him with bat on his knees. He was also assaulted on his head by appellant Priti Mishra. The appellant Rahul also thrashed him. His mother tried to save him. Both, his mother and the opposite party no. 2 were severely injured in the incident. After hearing their hue and cry, villager Ramesh Gangwar and others came and saved them. After this assault the appellants entered into

the house of opposite party no. 2, threw his household stuff. Rs. 20,000/- kept in the box got scattered when the box of opposite party no. 2 was thrown by the appellants. The appellants collected that money and ran away. When opposite party no. 2 tried to inform the police, appellant - Priti Mishra snatched his mobile and thrashed the mobile against the wall. The mobile was damaged. When he informed Chauki Incharge, Parsakhera, on 07.08.2021 both the parties were called by the Chauki Incharge. There the appellant - Priti Mishra blamed him of encroaching upon the house No. V-4 and robbing her of Rs. 20,000/- He sent application to various authorities but his report was not written. The appellants also gave him a threat to implicate in false cases.

After statements of the complainant under Section 200 Cr.P.C. and his witnesses under Section 202 Cr.P.C. the impugned order was passed and the appellants were summoned by the trial court accordingly.

It is argued by the learned counsel for the appellants that the incident is totally false. No such incident ever took place. The opposite party no. 2 and his mother are said to have sustained grievous injuries but no medical report has been placed before the court. Witness - Jitendra Tiwari has given an affidavit that he was forced to give false statement before the court. The appellants had also lodged an FIR against the opposite party no. 2 on 15.01.2022. They also moved applications before the various authorities on 29th November, 2021, 01st December, 2021 and 14th January, 2022, hence, prayer is made accordingly.

Learned counsel for the opposite party no. 2 opposed the prayer and submitted that the incident is quite true. Regarding incident, when his report was not lodged in the police station, he was compelled to move an application under Section 156(3) Cr.P.C. on 28.09.2021. This application was registered as a complaint. After statements of the complainant and his witnesses the appellants have been rightly summoned by the trial court under the above mentioned sections. Regarding FIR lodged by the appellants and various applications moved by the appellants, it is argued that all these complaints and FIR have been lodged by the appellants after the application under Section 156(3) Cr.P.C. was moved by him.

From perusal of the record, it is found that in the complaint two incidents; first dated 25th July, 2021 and the second dated 28th July, 2021 have been mentioned. Though, in his statement under Section 200 Cr.P.C. the complainant - opposite party no. 2 has reiterated the facts mentioned in the application under Section

156(3) Cr.P.C. and has reiterated the incidents dated 25th July, 2021 and 28th July, 2021 but none of his witnesses has supported the incident dated 25.07.2021. The incident dated 28.07.2021 mentioned in the complaint has been supported by two witnesses; Jitendra Tiwari and Sageer Ahmad. It is true that Jitendra Tiwari has filed an affidavit in the trial court that he was forced to give false statement in the court. Thus, it cannot be denied that the witness, PW 1 Jitendra Tiwari supported the incident dated 28.07.2021 alleged to have taken place between the parties, before the trial court as PW 1 whether he was compelled to give false affidavit or not would be decided after the evidence of the parties.

So far as the allegations regarding offence under Sections 323, 504, 506, 427, 379 IPC are concerned, the incident dated 28.07.2021 regarding above mentioned offence has been supported by the complainant and his witnesses in their statements before the trial court.

So far as summoning under Section 3(1) Da, Dha of SC/ST Act is concerned, no doubt in the complaint and in the statements of the complainant and the witnesses, it has come that caste based words were used by the appellants against the opposite party no. 2. If we go through the complaint and the statements of witnesses and complainant, it is clear that this quarrel between the appellants and opposite party no. 2 took place because the appellants allegedly had encroached upon the house mentioned in the complaint and when they were resisted from encroaching upon this house, the incidents dated 25.07.2021 and 28.07.2021 are said to have taken place. Thus, it is clear that the caste based words as mentioned in the complaint supported by the statements of the witnesses and by the complainant were allegedly hurled by the appellants not because O.P. No. 2 belonged to the particular community of SC/ST rather they were hurled because of the dispute regarding encroachment upon the house mentioned in the complaint.

As per judgement ***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 mere the victim belonging to SC/ST community is not enough for implicating the accused persons under the provisions of SC/ST Act, what is necessary is that the offended words must have been used by the accused person against the victim with intent to humiliate her/him because of her/his belonging to SC/ST community.

Thus, as per findings of the Apex Court, in the above judgement as the appellants are said to have hurled caste based words against the

opposite party no. 2 not because of his belonging to SC/ST community but because they were restrained by the opposite party no. 2 in encroaching upon the property mentioned in the complaint. Thus, the basis of the dispute was encroachment upon the house by the appellants and not the caste of the opposite party no. 2.

In the opinion of the court, the summoning of the appellants under Section 3(1)Da, Dha of SC/ST Act is against the mandate of the Apex Court as held in Hitesh Verma (supra).

So far as the summoning of the appellants under sections of IPC is concerned, as this is the factual dispute the allegations under sections of IPC shall be decided by the court after the evidence adduced by the complainant and the witnesses.

The order dated 17.02.2023 is hereby confirmed with regard to summoning of the appellants under Sections 323, 504, 506, 427, 379 IPC. The order dated 17.02.2023 is set aside with regard to summoning of the appellants under Section 3(1)Da, Dha of SC/ST Act.

The appeal is **allowed** partly.

Order Date :- 17.11.2023

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