

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6828 of 2023

Appellant :- Jaipal Singh

Respondent :- State of U.P. and Another

Counsel for Appellant :- Chandra Nath Bhatt

Counsel for Respondent :- G.A.

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

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

No one has put in appearance for opposite party no.2, despite of sufficient service.

This is an appeal against the order dated 27.3.2023 passed by learned Additional Sessions Judge/Special Judge SC/ST Act, Amroha in complaint case no. 83 of 2023, Smt. Gudiya Vs. Jaipal Singh, whereby the trial court has summoned the appellant to face trial under Sections 376, 506 IPC and 3(1) (Dha) of SC/ST Act police station Amroha District Amroha.

It is argued by the learned counsel for the appellant that regarding the incident dated 17.10.2022 a complaint was registered on 3.8.2022 wherein Deepak, the real brother-in-law of the complainant and one Adesh Kumar were shown as witnesses. In the statement under section 202 Cr.P.C. P.W.-1 Adesh Kumar has clearly stated that the incident was disclosed to him by the opp. party no. 2.

It is claimed that the incident is false. In fact, the appellant had made a complaint against the husband of the opp. party no. 2 Vijendra before the District Magistrate Amroha on 29.3.2022 that on the basis of forged Transfer Certificate and other forged documents, the husband of the opp. party no. 2 got an appointment as Safai Karmi. On this application an inquiry was made and the facts were found to be correct and the legal heir certificate issued in the name of the husband of the opp. party no. 2 was cancelled by Sub Divisional Magistrate concerned as per the order dated 6.7.2022 of the Executive Engineer Nagar Palika Parishad concerned. The husband of the opp. party no. 2 was terminated as per the order dated 29.7.2022 of the Executive Engineer Amroha.

After this order, the FIR was lodged against the husband of the opp. party no. 2 under sections 420, 467, 468, 471 I.P.C. on 10.8.2022 and it was only after lodging of the FIR by Lekhpal, in compliance of the order of the Executive Engineer Nagar Palika Parishad showing the incident dated 3.8.2022 on 17.10.2022 an FIR was lodged by the opp. party no. 2 against the appellant on false allegations, hence, the prayer is made to set aside the impugned order.

Learned A.G.A. opposed the prayer and submitted that the appellant has been summoned to face trial on the basis of the evidence placed before the trial court.

If we go through the complaint, there is allegation of rape by the appellant with the opp. party no. 2 and witnesses are said to be Deepak and Adesh Kumar. This Deepak is admittedly, the real brother of the husband of the first informant. Witnesses Deepak and Adesh Kumar in their statements under section 202 Cr.P.C. have clearly stated that regarding the incident the opp. party no. 2 had informed them, which clearly shows that none of the witnesses saw the incident. Admittedly, there is no version that the alleged victim was medically examined at any hospital. There is nothing on record that any video regarding alleged incident was prepared by the appellant. The documents filed by the appellant clearly show that the appellant had made a complaint against the husband of the opp. party no. 2 on 29.3.2022 and on the basis of that complaint after inquiry the husband of the opp. party no. 2 was terminated from his services vide order dated 6.7.2022 and vide order dated 29.7.2022 of the Executive Engineer concerned, the order of FIR against the husband of the opp. party no. 2 was made. Consequently, an FIR was lodged on 10.8.2022 against the husband of the opp. party no. 2 under sections 420, 467, 468, 471 I.P.C. it was only after lodging of the FIR on 10.8.2022 that on 17.10.2022 showing the incident dated 3.8.2022 a complaint has been filed by the opp. party no. 2 against the appellant. The facts clearly show that it is the clear misuse of the process of law by the opp. party no. 2. It cannot be imagined that the opposite party no.2 would go to see a plot in the absence of her husband with a person who is making complaint against the husband of the opp. party no. 2 and the inquiry was being conducted on this complaint and after inquiry, the husband of the opp. party no. 2 was terminated from his services and the FIR was lodged against the husband of the opp. party no. 2. It is clearly a malicious prosecution on behalf of the opp. party no. 2. The opp. party no. 2 did not even dare to appear before this court to oppose this appeal. In the opinion of the

court, the complaint being a malicious prosecution the summoning order passed on the basis of such complaint is liable to be set aside.

The impugned order dated 27.3.2023 passed by learned Additional Sessions Judge/Special Judge SC/ST Act, Amroha in complaint case no. 83 of 2023, Smt. Gudiya Vs. Jaipal Singh, whereby the trial court has summoned the appellant to face trial under Sections 376, 506 IPC and 3(1) (Dha) of SC/ST Act police station Amroha District Amroha is hereby set aside. Entire proceedings of the complaint case no.83 of 2023 (Smt. Gudiya Vs. Jaipal Singh, under Sections 376, 506 IPC and 3(1) (Dha) of SC/ST Act are quashed.

The appeal is accordingly **allowed**.

Order Date :- 6.11.2023

Gss