

Court No. - 80

Case :- CRIMINAL APPEAL No. - 6048 of 2022

Appellant :- Nain Alias Nayan Goswami

Respondent :- State of U.P. and Another

Counsel for Appellant :- Mayank, Amit Daga

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Notice has been served on the respondent no. 2, but none appeared on his behalf.

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 set-aside the order dated 01.11.2021 passed by learned Special Judge S.C./S.T. Act, Mathura in Special Trial No. 1566 of 2021 (State of U.P. Vs. Nain alias Nayan Goswami and others) under Sections 332, 353, 504 I.P.C. and Section 3(1)(r), 3(1)(s) and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station-Vrindavan, District-Mathur, arising out of Case Crime No. 455 of 2021, Police Station-Vrindavan, District-Mathura.

It is submitted by learned counsel for the appellant that in this case the informant is Constable and was not on duty at the time of alleged incident as said to have taken place. It is also submitted that neither any such incident took place nor he was insulted/humiliated or beaten by the appellant, even then with false allegation, by using his official power, he lodged the present F.I.R. with wrongful contention. During investigation no sufficient material was collected by the Investigating Officer even then charge sheet was filed under Section 332, 353, 504 I.P.C. and Section 3(1)(r), 3(1)(s) & 3(2)(v) S.C./S.T. Act. Learned court concerned also took cognizance of the offence vide order dated 01.11.2021 accordingly without applying it's judicial mind to the material present on record. It is also submitted that an information was obtained by the appellant from the department concerned in which it was informed under R.T.I. that the informant was not on duty at the time of alleged incident, but he was on rest, therefore, Sections 332 and 353 I.P.C. cannot be attracted because he was not

discharging his duty. Since the work of the informant was not related to the discharge of his official duties even then learned court concerned did not consider these facts while passing the order. In this way, the order passed by learned court concerned being illegal is liable to be set-aside and the appeal to be allowed.

Learned A.G.A. opposed the prayer as aforesaid and contended that the order passed by learned court concerned is passed on material available on record and not illegal, but it has been passed after applying its mind by the learned court. The complainant is a public servant and police personnel is always deemed to be on duty for 24 hours, therefore, it does not matter as to whether he was discharging public duty or not. It is also contended that in the incident assault was made on the complainant in which the complainant sustained injuries on his person those were six in number, but the learned court concerned did not pass the summoning order under Section 323 I.P.C., which is favourable to the appellant.

Section 332 I.P.C. provides that :

"332. Voluntarily causing hurt to deter public servant from his duty. - Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Section 353 I.P.C. also provided that :

"353. Assault or criminal force to deter public servant from discharge of his duty. - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

From the perusal of Section 332 I.P.C. it is clear that a person can

be charged for an offence under Section 332 I.P.C. when he caused hurt to deter public servant in the discharge of his duty as such public servant. Likewise, under Section 353 assault or criminal force is used to deter public servant from discharge of his duty.

In the present case the complainant, who is Constable, was at the time of alleged incident on rest, but he was not discharging his public duty, therefore, Section 332 and 353 I.P.C. cannot be said to be attracted. There is injury report relating to the complainant on record which shows that injuries were also found on his person during medical examination, but it has not been taken into consideration by the learned court concerned while passing the order of cognizance though it must have been considered.

In the considered view of this Court, the order passed by learned court concerned cannot be said to be based on material on record and lawful, but it being illegal and inappropriate is liable to be set aside. As a result order dated 01.11.2021 is hereby set-aside and appeal is **allowed** with the direction to the learned court concerned to pass the order afresh after considering the material on record and relevant law.

Order Date :- 8.12.2023

Sunil Kr. Gupta