

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6844 of 2023

Appellant :- Jitendra Nishad

Respondent :- State of U.P. and Another

Counsel for Appellant :- Balram Mishra

Counsel for Respondent :- G.A.,Narsingh Pandey

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

Heard learned counsel for the appellant, learned counsel for opposite party no. 2, learned A.G.A. for State and perused the record.

This criminal appeal has been filed by appellant against the impugned order dated 17.12.2022 passed by learned Special Judge (SC/ST Act), Sant Kabir Nagar in Complaint Case No. 95/2021 (Umesh Chandra Kanaujiya Vs. Jitendra Nishad) whereby the appellant has been summoned to face the trial under Sections 323, 504, 506 IPC and 3(1)(r), 3(1)(s) of SC/ST Act, Police Station- Mahuli, District- Sant Kabir Nagar.

It is submitted by learned counsel for appellant that regarding the incident dated 28.06.2021 and 04.07.2021 a complaint was ordered to be lodged by the court on application under Section 156(3) Cr.P.C. dated 16.07.2021 moved by opposite party no. 2. Attention of the Court is drawn towards statement of complainant under Section 200 Cr.P.C. wherein the incident dated 04.07.2021 has not been narrated by the first informant. He has only narrated the incident dated 28.06.2021 whereby he is said to have given a threat of life telephonically by the appellant and has not mentioned the incident dated 04.07.2021. Again the attention of the Court is drawn towards statement of PW-1 under Section 202 Cr.P.C. wherein the incident dated 28.06.2021 has been confirmed by the witness further this witness has disclosed the incident dated 08.07.2021 he has not stated that some incident took place on 04.07.2021 also. While in the complaint there is no averment that any incident took place on 08.07.2021.

Regarding the statement of PW-2, it is argued that though this witness has correctly stated the dates of incidents to be 28.06.2021 and 04.07.2021 but he has not clearly mentioned the cast based word alleged to be used by the appellant. Hence, it is argued that

no offence under Sections 323, 504 IPC and 3(1)(r), 3(1)(s) of SC/ST Act can said to be made out against the appellant. It is also argued that after these alleged incidents a complaint was registered by the wife of the appellant against the opposite party no. 2 wherein the opposite party no. 2 has been summoned by the court to face trial under Section 354B, 504, 506 IPC. Hence the prayer is made accordingly.

Learned counsel for opposite party no. 2 opposed the prayer and submitted that as both the parties belong to the same village and hence the appellant can be said to be knowing the cast of the first informant. Regarding medical it is submitted that report was not lodged by the police so medical examination of the victim could also not be done. The prayer is made accordingly.

In the complaint appended as page 22 of the paper book the, opposite party no. 2 has mentioned two incidents, one is dated 28.06.2021 and the other is dated 04.07.2021, whereby on 28.06.2021, the appellant is said to have hurled caste based words against the complainant telephonically and threat of life is also said to have extended by the appellant against the opposite party no. 2. The second incident is dated 04.07.2021 at about 8:00 p.m. when the appellant is said to have used caste based words, wild abuses and also given threat to the opposite party no. 2 inside his house and again a threat of life is also said to have extended by the appellant.

In the statement of complainant under Section 200 Cr.P.C. he has not mentioned any incident dated 04.07.2021, he has only mentioned one incident dated 28.06.2021 whereby he is said to have given threat of life on his mobile. PW-1 Ramjeet though has disclosed two incidents dated 28.06.2021 & 08.07.2021 but as per complainant no incident took place on 08.07.2021, otherwise also while as per incident dated 28.06.2021 in the complaint. There is allegation of hurling caste based words, abuses and giving threat of life to him by the appellant but the allegation of hurling caste based words on 28.06.2021 is not made in the statement of the complainant at the same time. PW-2 though has mentioned in his statement under Section 202 Cr.P.C. the date of both incidents 28.06.2021 & 04.07.2021 but he has not clearly mentioned what caste based words were hurled against the complainant. The witnesses appear in the court to confirm as support the statement of the complainant. When the complainant himself has not mentioned incident dated 04.07.2021 in his statement, the statement of witnesses PW-1 and PW-2 regarding incident dated 08.07.2021/04.07.2021 cannot be said to be made in support of the

version of the complainant. As the complainant in his statement has only stated that on 28.06.2021 at 9:48 p.m. The life threat was extended to him by the appellant on the basis of statement of first informant the summoning of the appellant under Section 506 cannot be said to be erroneous any way. So far as the summoning under Sections 323 & 504 IPC and 3(1)(r), 3(1)(s) of SC/ST Act is concerned, regarding these allegations, complainant has not stated even a single word in his statement under Section 200 Cr.P.C.

Thus, in the opinion of the Court the statements of PW-1 and PW-2, can be said to be the exaggerated statement which cannot be taken into consideration and the summoning of appellant under Sections 323, 504, 506 IPC and 3(1)(r), 3(1)(s) of SC/ST Act is found to be against the evidence on record. Hence, this criminal appeal is **allowed partly**.

Summoning order dated 17.12.2022 is confirmed with regard to summoning under Section 506 IPC. However, it is set aside with regard the summoning under Sections 323, 504 IPC and 3(1)(r), 3(1)(s) of SC/ST Act.

Order Date :- 6.11.2023

Sharad/-