

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7004 of 2023

Appellant :- Rajmohan @ Guddu Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Hitesh Pachori

Counsel for Respondent :- G.A., Sushil Kumar Pandey

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

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

This is an appeal filed against the order dated 10.05.2023 passed by the Special Judge (SC/ST Act), Mathura in Special Complaint Case No. 26/2021, Surendra Vs. Rajmohan @ Guddu Yadav & another, under Sections 323, 504, 506 I.P.C. and Section 3(1) r, s of Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Farah, District Mathura.

By impugned order, learned trial court summoned the appellants to face trial under Sections 323, 504, 506 IPC and Section 3(1) r, s of SC/ST Act.

As per facts of the case, an application under Section 156(3) of Cr.P.C. dated 22.09.2020 was moved by the opposite party no.2 against the appellants and two unknown persons with the version that the father of opposite party no.2 Sri Chuttan Singh had executed an agreement to sale on 25.01.2017 regarding his land Khasra No.548, measuring 0.1010 hectares equivalent to 110 square meters with both appellants for consideration of Rs.1,01,00,000/-. At the time of execution of the agreement to sale a cheque of Rs.6,00,000/- was given to the father of the applicant/opposite party no.2. Another cheque of Rs.45,000/- was also given which could not be cashed and got dishonoured. On 05.04.2019 a sale deed was also executed in the name of Rajmohan, appellant no.1, but out of sale consideration of Rs.1,01,00,000/- only Rs.35,00,000/- have been paid by the opposite party nos.1 and 2/ the present appellants. Rest Rs.66,00,000/- have not been paid by them. The possession of the land was given to the opposite parties in the application, who are in possession of that plot after making a hotel thereon. The applicant/ opposite party no.2 is a person

belonging to the SC/ST community, while opposite party nos.1 and 2, the present appellants belong to the general category. The father of the applicant/ opposite party no.2 died on 06.04.2020. When the applicant/ opposite party no.2 demanded the rest amount of Rs. 66,00,000/- from opposite party nos.1 and 2, the present appellants refused to pay the same. They used force against him, uttered caste based words and humiliated him publicly. This incident was witnessed by the witnesses mentioned in the application. The opposite party nos.1 and 2, the present appellants also gave threat of life.

This application under Section 156(3) of Cr.P.C. of the present opposite party no.2 was registered as a complaint and after the statements of the complainant under Section 200 Cr.P.C. and his witnesses under Section 202 Cr.P.C. the impugned order dated 10.05.2023 was passed and both the appellants were summoned to face trial under Sections 323, 504, 506 IPC and Section 3(1) r, s of SC/ST Act.

It is submitted by the learned counsel for the appellants that regarding the same matter a civil suit was filed by the real brother of the opposite party no.2. The plaint of that suit is appended at page-61 of the paper book. In this plaint dated 23.10.2020 the incident dated 12.09.2020, which is the subject matter of the present complaint, has not been mentioned. The sale deed impugned is also on record. As per that sale deed, the whole amount is said to have been paid by the appellants. Even after that as per the version of their written statement the appellant no.1 are ready to pay Rs.14,00,000/- to the opposite party no.2 just to finish the matter between them. The provision of Section 202 (1) of Cr.P.C. has not been complied with. No suit has been filed by the opposite party no.2/ his father/ his brother for cancellation of the sale deed. The prosecution being a malicious one, the prayer is made accordingly.

Learned counsel for the opposite party no.2 opposed the prayer and submitted that as per the version of the complaint Rs.66,00,000/- the rest amount of sale consideration was not paid by the appellants and when the demand of this money was made the impugned incident dated 12.09.2020 took place.

Learned A.G.A., however, argued that, though as per the sale deed whole sale consideration is said to have been paid by the appellants to the opposite party no.2 but as per the facts some construction was there on the land, which was sold to the appellants regarding that construction only the money was being

demanded by the opposite party no.2 from the appellants. Regarding that construction as per written statement filed by appellant no.1 in the civil court he is agreed to pay Rs.14,00,000/-.

From the perusal of the record, it is found that as per the version of the complaint, Rs.66,00,000/- are said to be due towards the appellants as rest sale consideration of the sale deed executed on 05.04.2019. This sale deed is appended with the paper book, wherein it is clearly mentioned that the whole amount of sale consideration has been paid by the appellant no.1 to the father of the opposite party no.2. Admittedly, no suit regarding cancellation of sale deed has been filed by the opposite party no.2 or his brother or father (when he was alive) and if we go through the plaint of the civil suit, which is filed by the brother of the opposite party no.2 against the appellant no.1 there is no whisper of Rs.66,00,000/- due towards the appellant no.1. However, due amount towards construction on the land is shown to be Rs.14,00,000/- as is argued by the learned A.G.A.

In the plaint dated 23.10.2020, there is no mention of the incident dated 12.09.2020 that the appellants on 12.09.2020 used caste based words, humiliated opposite party no.2 and refused to pay the amount. Thus, the present case appears to be a malicious prosecution. As per the sale deed itself, the whole amount of sale consideration was received by the father of the opposite party no.2 and in the civil suit filed by the brother of the opposite party no.2 regarding the same matter there is not even a whisper of the incident dated 12.09.2020, which clearly shows the incident to be false.

So far as summoning of the appellants under Sections of SC/ST Act is concerned as per the complaint itself, the dispute between the parties is regarding the payment of rest amount of sale consideration, thus, if any insult or intimidation was made with intent to humiliate the opposite party no.2 it was not because of the reason that the opposite party no.2 belonged to the SC/ST community. Thus the sections of SC/ST Act also do not apply to the present incident. The trial court in its order has not considered this fact.

The trial court did not endeavour to have a look of the sale deed mentioned in the complaint wherein the payment of whole sale consideration is admitted, thus if the whole sale consideration was made by the appellants no cause of action can be said to be there for the appellants to commit the offence. The impugned order is found liable to be set aside.

The appeal is **allowed**. Impugned order dated 10.05.2023 is set aside. The whole proceedings of the aforesaid complaint are hereby quashed.

Order Date :- 7.11.2023

Radhika