

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6935 of 2023

Appellant :- Avinash And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Brij Lal Shukla

Counsel for Respondent :- G.A.,Brijesh Kumar Gautam,Shiv Vilas Mishra

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

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

Though the name of the learned counsel for the opp. party no. 2 appears in the cause list, neither any one appeared before the court for the opp. party no. 2 nor any counter affidavit has been filed on his behalf.

This appeal has been preferred against the cognizance order dated 19.4.2023 passed by ADJ/ Special Judge SC/ST Act, Gautambudh Nagar in S.T. No. 531 of 2023, State Vs. Avinash and another, Case Crime No. 25 of 2023, police station Kasna District Gautambudh Nagar. By the impugned order the trial court has taken cognizance under sections 354, 323, 504, 506 I.P.C. and 3(1)da, 3(1)dha and 3(2)va of SC/ST Act against the appellant no. 1 and under sections 323, 504, 506 I.P.C. and 3(1)da, 3(1)dha and 3(2)va of SC/ST Act against the appellant no. 2.

As per the facts of the case on the basis of an application u/s 156(3) Cr.P.C. dated 21.10.2022 an FIR was lodged at the police station concerned on 3.2.2023 against the present appellants with the allegation that the opp. party no. 2 had borrowed Rs. 4 lacs from the appellants whereby appellant no. 1 had paid Rs. 50,000/- through NEFT from the account of his wife Poonam, the appellant no. 2 on 22.6.2022 and Rs. 2 lacs were paid to him through a cheque on 30.6.2022. The interest of the same was being paid by the opp. party no. 2 to the appellants regularly. With regard to this borrowed money an agreement to sell was executed between the parties wherein the opp. party no. 2 had only put his signature and when after the payment of the whole amount Rs. 2,50,000/-, he asked the appellants to get the agreement to sale dated 30.9.2022 cancelled the appellants refused. They thrashed him, his wife was

molested at the hands of the appellant no. 1. Both the appellants hurled caste based abuses, thrashed him and refused to get the agreement to sale cancelled. After investigation, the charge sheet was filed and the cognizance was taken by the trial court.

The appellants have appeared before this court against this cognizance order dated 19.4.2023.

It is argued by the learned counsel for the appellants that an agreement to sale was executed between the parties for a consideration of Rs. 4,50,000/-. Rs. 4 lacs were paid to the opp. party no. 2 and Rs. 50,000/- were agreed to be paid at the time of execution of the sale deed but now the opp. party no. 2 is not ready to execute the sale deed, so this FIR on the false ground has been lodged.

Learned A.G.A., however, opposed the prayer.

From the perusal of the record, it is found that admittedly, an agreement to sale was registered by the opp. party no. 2 in favour of the appellants. The opp. party no. 2 has also admitted to receive some amount from the appellants. Though it is the case of the opp. party no. 2 that the amount was received by the opp. party no. 2 as a loan. For the safety of this amount of loan, the agreement to sale was executed. There was no intention of the opp. party no. 2 to sell any land in favour of the appellants. It is also the allegation that regarding the amount of loan the regular payment of interest was being done by the opp. party no. 2. There is allegation of hurling caste based abuses and molesting the wife of the opp. party no. 2. In the whole FIR, there is no allegation that caste based words were used by the appellants against the opp. party no. 2 or his family members with the intention to insult or intimidate him or his family members because of their being the members of scheduled caste and scheduled tribe community, hence, the offence under section 3(1)da, 3(1)dha and 3(2)va of SC/ST Act cannot be said to be made out against the appellants.

The trial court in the impugned order has nowhere mentioned the ground of summoning the appellants under the sections of SC/ST Act. Whether, an agreement to sale was executed between the parties with the intention of selling the property in favour of the appellants or whether the amount mentioned in the FIR had been paid to the opp. party no. 2 as loan is not the matter to be decided by this court as the summoning is not under sections related to that dispute.

So far as the summoning under sections 354, 323, 504, 506 I.P.C. is concerned, let this factual dispute be decided by the trial court on merits, hence, the appeal is party **allowed**.

The cognizance order dated 19.4.2023 passed by ADJ/ Special Judge SC/ST Act, Gautambudh Nagar in S.T. No. 531 of 2023, State Vs. Avinash and another u/s 3(1)da, 3(1)dha and 3(2)va of SC/ST Act against the appellants is set aside. The appeal to the extent of sections 3(1)da, 3(1)dha and 3(2)va of SC/ST Act is allowed. The appeal is dismissed with regard to cognizance order u/s 354, 323, 504, 506 I.P.C. The cognizance u/s 354, 323, 504, 506 I.P.C. against appellant no. 1 and cognizance u/s 323, 504, 506 I.P.C. against appellant no. 2 is hereby confirmed.

Order Date :- 28.10.2023

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