

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7057 of 2023

Appellant :- Dr. Kamlesh Prajapati

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ashok Kumar Maurya

Counsel for Respondent :- G.A., Rakesh Kumar Yadav

Hon'ble Subhash Chandra Sharma, J.

1. Heard learned counsel for the appellant, learned counsel for private respondent as well as learned A.G.A. and perused the material on record.

2. This present criminal appeal has been filed with a prayer to allow the present criminal appeal and setting aside/ quashing the impugned charge sheet dated 31.10.2022 & cognizance order dated 15.03.2023, under Sections 504, 506 I.P.C. and Section 3(2)(va) & 3(1) dha of S.C/S.T. (Prevention of Atrocities), Act, 1989 arising out of Case Crime No. 293 of 2022 in P.S.- Gadvar, District-Ballia, pending in the court of Special Judge (SC/ST) Act and also pray to stay the aforesaid proceedings.

3. It is submitted by learned counsel for the appellant that in this case, the appellant was running a dental clinic. He never treated eye disease. It is further submitted that his clinic is located in the village of the respondent. He never treated the eye of the respondent's son, even though false F.I.R. was lodged against him under Sections 326, 504, 506 I.P.C. and Section 3(2)(v) of S.C./S.T. Act, after delay of three months from the date of occurrence i.e. 04.06.2020. It is also submitted that the respondent wanted to extort money from the appellant regarding which, he moved an application to S.S.P. through post, but no action was taken on it and on the other hand, the respondent lodged this F.I.R. with false allegations. During investigation offence under Section 326 I.P.C. was not found to be made out, but chargesheet under Sections 504 and 506 I.P.C. and Section 3(1) (Dha) and 3(2)(va) of S.C./S.T. Act was filed, on the basis of which cognizance was taken by the learned court below on 15.03.2023, which cannot be said to be lawful and based on material on record, therefore, request to set it aside and allow the appeal.

4. Learned counsel for the respondent and learned A.G.A. for the

State opposed the prayer as aforesaid and contended that in this case after investigation, charge-sheet was filed by the police after collecting sufficient material. Learned court concerned after perusing the record and considering the material passed the order in question and took cognizance of the offences, it cannot be said to be illegal and inappropriate, but this appeal being devoid of merits, is liable to be dismissed.

5. On considering the facts and circumstances of the case, submissions made by learned counsel for both the parties as well as learned A.G.A, perusal of the record and the order passed by learned court concerned dated 15.03.2023, it appears that there is allegation of abuse and insult relating to the caste of the respondent and also grievous injury to the eye of the son of the respondent and during investigation, it was found that no wrongful treatment was given to the patient but after treatment in eye-hospital Sitapur, his eye sight came back as a result of which offence under Section 326 I.P.C. was not found to be made out. There is material to show that insult of the respondent was made by the appellant by use of words relating to his caste, in this way offence under Sections 504, 506 I.P.C. and under the provisions of SC/ST Act prima facie appears to be made out. All these facts have been taken into consideration by the learned court concerned while passing the order in question. There appears no any illegality or impropriety in the order, therefore, it does not warrant interference by this Court at this stage, but this appeal being devoid of merits is liable to be dismissed.

6. Hence, this appeal is **dismissed**.

7. However, the appellant may have an option to move an application for discharge application before the learned court concerned at an appropriate stage, which shall be heard and decided in accordance with law on the basis of material on record.

8. It is also directed that in case, appellant appear and move bail application before the learned court concerned within a period of 30 days from today, the same shall be heard and disposed of as expeditiously as possible in the light of latest law as laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another LL 2022 SC 577 decided on 11.07.2022**.

Order Date :- 7.12.2023

Nitika Sri.