

Court No. - 84

Case :- CRIMINAL APPEAL No. - 6938 of 2023

Appellant :- Mahesh Yadav

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ravi Sahu

Counsel for Respondent :- G.A., Pawan Kumar Srivastava, Siya Ram Verma

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

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

The present appeal has been preferred against the order dated 13.04.2022 passed by the Special Judge SC/ST Act, Kanpur Nagar in Complaint Case No.422 of 2021 (Smt. Ram Janki Versus Jagmohan Yadav and others), under Sections 323, 504, 506, 452 I.P.C. and Sections 3(1) Da and 3(1) Dha of SC/ST Act, Police Station Naubasta, District Kanpur Nagar.

By impugned order, the appellant alongwith one co-accused was summoned to face trial under Sections 323, 504, 506, 452 I.P.C. and Section 3(1) Da and 3(1) Dha of SC/ST Act.

As per the facts of the case, an application under Section 156(3) Cr.P.C. was moved by the opposite party no.2 against the appellant, one Jagmohan and 5-6 unknown persons on 11.01.2021 with the allegation that opposite party no.2 had purchased a plot on 01.11.2017 from the present appellant. On 29.11.2020, when the opposite party no.2 had gone to have a look of her plot she found there five persons. Out of them one Jagmohan claimed himself to be the owner of that land. Those persons were said to have hurled caste based abuses, filthy language and wild abuses against the opposite party no.2 and her son. In the night the boundary wall made by the opposite party no.2 was said to have demolished by these five persons.

On 24.12.2020 at 9:00 P.M. co-accused Jagmohan Yadav alongwith the present appellant and 5-6 unknown persons forcibly entered the house of the opposite party no.2, humiliated her by using caste based words, hurled wild abuses and thrashed her with kicks and blows. They also robbed Rs.4300/- kept in the Almirah

of the first informant. They are also said to have given threat of life.

This application under Section 156 (3) of Cr.P.C. was registered as a complaint and after the statements of the complainant under Section 200 of Cr.P.C. and her witnesses under Section 202 of Cr.P.C. the impugned order dated 13.04.2022 was passed by the trial court summoning the appellant Mahesh Yadav alongwith one other co-accused to face trial under Sections 323, 504, 506, 452 I.P.C. and Sections 3(1) Da and 3(1) Dha of SC/ST Act.

It is argued by the learned counsel for the appellant that from the perusal of the complaint it is very much clear that the incident took place inside the house, hence, an offence under Section 3(1) Da and 3(1) Dha of SC/ST Act cannot be said to be made out against the appellant because as per Section 3(1) Da and 3(1) Dha of SC/ST Act an intentional insult or intimidation or hurling of abuses must be with intent to humiliate a member of SC/ST community in any place within public view. The incident inside the house cannot be said to be within public view and in the statement of the complainant under Section 200 Cr.P.C. there is no version that any caste based words were used against the complainant or her family members. In this statement of the complainant, there is no version of any offence under Section 323 of IPC also. The witnesses have also stated in their statements that the incident took place inside the house, hence, the prayer is made that offence under Section 323 IPC and Section 3(1) Da and 3(1) Dha of SC/ST Act cannot be said to be made out against the appellant.

Learned counsel for the opposite party no.2 opposed the prayer and submitted that from the version of the complaint and the statements of the witnesses, it is very much clear that the complainant was abused and given threat of life by the appellant inside the house, hence, summoning of the appellant under Sections 504, 506 and 452 of IPC cannot be said to be against the evidence on record. So far as the summoning under Section 323 IPC and Section 3(1) Da and 3(1) Dha of SC/ST Act is concerned, learned counsel for the opposite party no.2 failed to show any version in the complaint or the statement of the witnesses to summon the appellant under Section 3(1) Da and 3(1) Dha of SC/ST Act.

From the perusal of the record, it is found that in the complaint and in the statement of the witnesses, the whole incident is said to have taken place inside the house, any witness came inside the house to

save the complainant and heard the hurling of caste based abuses is not the version of the complainant so the incident of hurling abuses or caste based words cannot be said to be taken place within public view. So far as Section 323 of IPC is concerned, the complainant in her statement under Section 200 of Cr.P.C. has not mentioned any offence constituting the ingredients of Section 323 of IPC. Rest statements of the witnesses are placed before the Court in support of the statement of the complainant, while complainant has not alleged any offence against the appellant under Section 323 of IPC in her statement on the basis of the statements of the witnesses the offence under Section 323 IPC cannot be said to be made out against the appellant.

In the opinion of the Court, the summoning of the appellant under Section 323 IPC alongwith Section 3(1) Da and 3(1) Dha of SC/ST Act is found against the evidence on record.

Hence, the appeal is **allowed** partly. The summoning order dated 13.04.2022 is set aside with regard to Section 323 of IPC and Section 3(1) Da & 3(1) Dha of SC/ST Act, however, it is confirmed with regard to summoning of the appellant under Sections 504, 506 and 452 of IPC.

Order Date :- 9.11.2023

Radhika