

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7044 of 2023

Appellant :- Vinay Kumar Nishad And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ram Prakash Upadhyay, Anmol Ratan

Counsel for Respondent :- G.A., Ramesh Chand

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

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

This appeal has been filed against the judgement and order dated 25.11.2022 including the charge sheet dated 08.11.2022 and further proceedings initiated by Special Judge SC/ST Act/Additional Session Judge, Court No. 2 Bhadohi (Gyanpur) in S.T. No. 470 of 2022 (State Versus Vinay Kumar Nishad and others) arising out of Case Crime No. 281 of 2022, under Sections 323, 504, 506 I.P.C. and Section 3(1) (Da), 3(1) (Dha) of SC/ST Act, Police Station Gopiganj, District Bhadohi, pending in the court of Special Judge SC/ST Act/Additional Session Judge, Court No. 2 Bhadohi (Gyanpur).

By the impugned order dated 25.11.2022, trial court took cognizance under Sections 323, 504, 506 I.P.C. and Section 3(1) Da, Dha of SC/ST Act against the appellants.

It is argued by the learned counsel for the appellants that incident is dated 16.08.2022 while the first information report has been lodged on 20.09.2022. There is no explanation of this delay of more than one month. In the first information report itself no caste based words have been mentioned as to what caste based words were used by the accused persons. The injuries are found to be simple. Hence the prayer is made accordingly.

Learned counsel for the opposite party no.2, however, opposed the prayer and submitted that appellant no.4 is Gram Pradhan. The first informant is a poor person. The incident as mentioned in the first information report took place with him. All the witnesses including the first informant in their statements have stated that caste based words were used by the appellants, hence the prayer is

made to dismiss the appeal.

As per fact of the case, regarding incident dated 16.08.2022, a first information report was lodged by the opposite party no.2 on 20.09.2022 against all the four appellants with the version that water was flowing in his field continuously. When the first informant resisted, all the four appellants started abusing him and his family members and also thrashed them with kick, fist and baton and also extended threat of life.

After investigation, the Investigating Officer filed charge sheet against Vinay Kumar Nishad, Sanjay Nishad, Sitaram Nishad and Matasevak, father of Vinay Kumar Nishad and rest accused persons namely, Deepak, Ashish, Rohit mentioned in the first information report, were exonerated by the Investigating Officer. In the whole first information report, no caste based words or any abuses have been specifically mentioned as, to what abuses were hurled or caste based words were used by the appellants. In the statement of the first informant, it has come that accused persons abused them and used caste based words. In the statement of independent witnesses namely, Daya Shanker, Naney Lal, Rajesh Kumar and Kundan, it has come that along with assault, caste based words were also used against the first informant and his family members but what caste based words were used, has not been specified in the first information report or in the statements of the first informant or the witnesses. It has also not come in the statements that abuses or caste based words were used with intention to humiliate the first informant and his family members because they belonged to Scheduled Caste/ schedule tribe community, rather the dispute is said to have arisen and the incident is said to have taken place because of water flowing in the field of the first informant.

Thus in the opinion of the Court, taking cognizance by the court concerned under section 3(1) (Da), 3(1)(Dha of SC/ST Act is against the mandate of the law laid down by Hon'ble Apex Court in the case of ***Hitesh Verma Versus The state of Uttarakhand and another, Criminal Appeal No. 707 of 2020 (arising out of SLP (Criminal) No. 3585 of 2020, dated 05.11.2020.*** So far as the cognizance under Sections 323, 504, 506 I.P.C. is concerned, the allegation with regard to these sections shall be decided after the evidence of the parties. However, from the face of record, no sufficient ground is found to take cognizance under Section 3(1) (Da), 3(1)(Dha of SC/ST Act.

The appeal is ***allowed partly.*** Cognizance order under Sections

323, 504, 506 I.P.C. is confirmed. Cognizance order under Section 3(1) (Da), 3(1)(Dha of SC/ST Act is hereby ***set aside***.

Order Date :- 20.11.2023
T.S.