

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7035 of 2023

Appellant :- Subelal Patel And 3 Others

Respondent :- State Of U.P.And Another

Counsel for Appellant :- Mohd. Monis

Counsel for Respondent :- G.A.,Ravindra Kumar

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

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

Learned counsel for the opposite party no.2 did not put in appearance at the time of arguments, though on the last date he was present in the Court and had sought time to file counter affidavit. No counter affidavit has also been filed till date.

This is an appeal against the order dated 28.02.2023 passed by the Special Judge (S.C./S.T. Act), Allahabad in Complaint Case No.37 of 2022 (computer No.15/2020) (Rajkumar Vs. Subelal Patel and others), under Sections 323, 504, 427, 452 IPC and Section 3(1) (x) of S.C./S.T. Act, Police Station Utraon, District Prayagraj.

By impugned order, the appellants have been summoned by the trial court to face trial under Sections 323, 504, 427, 452 IPC and Section 3(1) (x) of SC/ST Act.

As per facts of the case, a complaint was filed by the opposite party no.2- Rajkumar against the appellants and one Subhash on 26.02.2020 with the allegations that he runs a small tea shop on the main gate of his house. All the appellants and one Subhash who are miscreant type of persons always used to enjoy tea from his shop without making any payment for the same. In December, 2019 when the opposite party no.2 asked the appellants to clear his due amount he was hurled caste based words, given a threat of his murder and to destroy his shop, then he stopped supplying free tea to the appellants. On 10.01.2020 at 4:00 PM all the appellants in furtherance of their common intention came at his shop, hurled caste based words and when the opposite party no.2 demanded his money he was rushed and chased. When he entered his house and bolted the gate from inside the appellants broke the door, entered his house and thrashed him badly by kicks, blows and batons. His

wife and mother came for his rescue, witnesses Ramnaresh, Photodevi, Aadhaprasad and many other villagers came and saved him, but the appellants robbed the whole stuff of his shop, broke his stove, cemented sheet and caused damage of about Rs.20,000/-. His report was not lodged in the police station. He sent a registered letter to the S.S.P., Prayagraj on 12.02.2020, but no action was taken.

After registering the complaint the statements of the complainant under Section 200 Cr.P.C., his mother and wife as PW-1 and PW-2 respectively under Section 202 Cr.P.C. were recorded and the trial court passed the impugned order summoning the appellants to face trial in the abovementioned sections.

It is argued by the learned counsel for the appellants that there is old enmity between the parties. The attention of the Court is drawn towards the report of Lekhpal concerned, whereby it is shown to be reported that on the complaint of opposite party no.2 against the appellant Subelal when matter was inquired appellant Subelal was found in illegal possession over the banjar land of Gata No.102/0.0520 hectares of the village since last 40 years, where his father had installed the pumping set also. The trees grown by Subelal were also found there. On an action under Section 122B U.P.Z.A. & L.R. Act Subelal was dispossessed from the land. Against this order of dispossession a suit as Case No. 837 of 2012, State Vs. Subelal, under Section 3/5 of Prevention of Damage to Public Property Act, is pending before the ACJM, Court No.10, Allahabad and at the time of report no possession of Subelal was found on Gata No.102/0.0520.

Again the attention of the Court is drawn towards the case filed by Subelal in the court of S.D.M., Handia against five persons including the father of the opposite party no.2 Jiyalal whereby there is an allegation that on 30.07.2017 a sheesham tree belonging to Subelal was stolen by all the named persons and the wood of the tree was not being returned back to Subelal by the named accused persons until they were given Rs. 6500/- by Subelal. There is one more FIR dated 25.12.2019 registered as Case Crime No.366 of 2019, under Sections 379 and 427 IPC lodged by appellant Subelal against opposite party no.2 Rajkumar and his father Jiyalal, whereby it is alleged that on 19.12.2019 opposite party no.2 and his father had stolen the pump set of the appellant Subelal from his land. As the FIR was lodged on 25.12.2019 against opposite party no.2 and his father because of this enmity only on 26.02.2020 showing incident dated 10.01.2020 the present false complaint has been filed.

On the basis of the above proceedings, it is further argued that there is enmity between the parties regarding land in possession of appellant Subelal so no question arises that the appellants would go to the shop of the opposite party no.2 and would enjoy tea free of cost or on a credit basis. Thus, the whole incident claiming to be false prayer is made accordingly.

Learned A.G.A. opposed the prayer and submitted that as appellant Subelal was dispossessed by the competent authorities from the land in dispute on the complaint of the opposite party no.2 so all these proceedings were initiated by appellant Subelal against the opposite party no.2 and his father on the false grounds and due to enmity only the incident took place on 10.01.2020.

From the documents placed before the Court it is clear that there is enmity between the parties regarding the land in the village, but enmity is a double edged weapon which can lead the appellants to commit an offence and could also get them falsely implicated. The incident is shown to be dated 10.01.2020 at 4:00 p.m., whereby the appellants are said to have thrashed the opposite party no.2. He is said to have hurled caste based words at his shop and thrashed inside his house. His shop was ransacked. Though the factual dispute as mentioned in the complaint shall be decided by the trial court after the evidence of both the parties, but so far as the hurling of caste based words is concerned, this incident of hurling caste based abuses is said to have committed at the shop of the complainant and supporting this incident at shop except the complainant no other witness has been produced in the trial court. So far as the statements of PW-1 and PW-2 are concerned there are admittedly the witnesses of the incident committed at the house of the complainant wherein there is no allegation of hurling caste based abuses. So far as using caste based words on the shop of the complainant are concerned, this allegation is not supported by any witness in the trial court. Otherwise also, these caste based words were hurled because of the opposite party no.2 being a person of scheduled caste or scheduled tribe community is not the version of the complaint. The incident is shown to be dated 10.01.2020 and regarding incident dated 10.01.2020 the appellants are summoned to face trial under section 3(1) (x) of SC/ST Act, while in the year 2020 there was no such provision in the SC/ST Act, which shows that the officer concerned did not even try to go through the act that under the section, he is summoning the appellants, does not exist in the statute. The Act clearly shows that in the year 2016 section 3(1) (x) of SC/ST Act was substituted by Section 3(1) r/ s of SC/ST, wherein it has been clearly mentioned that a person can

be said to have been committed the offence under these sections only if he intentionally insults or intimidates or abuses any person belonging to the scheduled caste or scheduled tribe community within public view because of his being a member of SC/ST community. There is no such allegation in the complaint that the complainant was intentionally abused, insulted or intimidated by the appellants with intent to humiliate him because of his being a member of the scheduled caste or scheduled tribe community.

Hence, the appeal is **allowed** partly. The impugned order dated 28.02.2023 is set aside with regard to summoning of the appellants under Section 3(1) (x) of SC/ST Act and it is confirmed with regard to the summoning of the appellants under Sections 323, 504, 427, 452 I.P.C.

Order Date :- 28.10.2023

Radhika