

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7056 of 2023

Appellant :- Ajmer

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Uttar Kumar Goswami

Counsel for Respondent :- G.A.,Kaushal Kishore Mani,Sachida Nand Tiwari

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for both the parties as well as learned A.G.A. and perused the material on record.

This present criminal appeal has been filed with a prayer to allow the present criminal appeal and setting aside the order dated 12.05.2023 passed by Special Judge SC/ST Act Saharanpur in Misc. Case No. 629 of 2022 "Ajmer Vs. Gaje Singh and others" 2021 and to direct the court below to pass order for summoning the respondent accused.

Facts in brief are that an application under Section 156(3) Cr.P.C. was filed on the part of the complainant/ appellant against the accused persons with Araj No. 30/1960/1 area amounting to 7 Bigha which was entered in his favour in revenue record in which popular plants were being implanted. In the night on 12.09.2022 the accused persons cut down the plants and also on interference assaulted him with abuse relating to his caste. The appellant entered into the tubewell cell even though the accused persons went there and made assault and also beat him. The wood was taken away in trolley. An application was given to S.S.P. but no any action was taken by him. As a result application was moved before the learned court for direction to register the case against the respondents. It was accompanied with postal receipt, copy of Aadhar Card, bank passbook, caste certificate and some photographs relating to trees those were cut and also the extract of revenue record. On that application report from the police station concerned was called for by the court concerned in which it was disclosed that relating to the land in dispute a civil suit was pending before the civil court between the parties and for making pressure on them present application was filed. The learned court concerned considered the allegations made by the appellant and the police report and also the material on record and it was found that in the latest Khatauni the land in dispute was entered into as Dabur regarding which there was civil suit pending between the parties and also there was entry of name of the appellant in the revenue record but it was not latest and it was also found that the aforesaid land was got vacated by order of S.D.M. The present application was moved on the part of the appellant to make pressure on the accused persons that was the reason it was rejected and being aggrieved with the order present appeal has been preferred before this Court.

It is submitted by learned counsel for the appellant that the land in dispute was

entered into revenue record in his favour as Patta on which he planted trees. Those trees were being cut by the accused persons on which he interfered but they made assault on him and also abused with the words relating to his caste for humiliating him in the society that was the reason present application under Section 156(3) Cr.P.C. was filed before the learned court concerned with photographs of the field where trees were cut by the accused persons and this material was not taken into consideration by the learned court concerned but passed the order in question illegally without considering the material on record. Even under pressure of local police no medical examination was got conducted to verify the injuries caused by the respondents to the appellant. In this way, request to set aside the order passed by the learned Special Judge dated 12.05.2023 and to allow the appeal.

Learned counsel for the respondents as well as learned A.G.A. urged that in this case as per latest revenue record the land was Dabur land and it was not owned by the appellants. The accused persons are Gram Pradhan and his inmates at their instance the land was got vacated by order of S.D.M. that was the reason for making pressure on the respondents this application was moved with false allegations of *Maar Peet* and abuse. There is no any medical report to show that there was *Maar Peet* between the parties and injuries were caused to them. As per latest Khasra it cannot be said that it was owned by the appellant. The dispute regarding entries of the land are in question before the civil court in civil suit pending between the parties, in this way the case is of purely civil nature and no prima facie case against the accused persons is made out. As a result, present application was rejected and there is no any illegality or impropriety in the orders.

On considering facts and circumstances of the case, submissions made by learned counsel for the appellant, learned counsel for the respondents as well as learned A.G.A. for the State and material on record, it appears that initially the dispute is related to the land in Khasra No. 30/1960/1 regarding which entry has been made in favour of the appellant and thereafter as Dabur land regarding which civil suit it also pending before the learned civil court in which their rights are to be decided finally. There is allegation of *Maar Peet* and abuse with words relating to his caste but no any medical report has been filed in support of incident of *Maar Peet*. All the facts are in the knowledge of the appellant and evidence can also be produced by him regarding incident. There is nothing new to be discovered during the course of investigation by the police, therefore, it cannot be said that by not lodging F.I.R. there is prejudice to the appellant but course for filing complaint against the accused persons is always open to him. As a result, there appears no need to this Court to make interference in the order passed by learned Special Judge on 12.05.2023 but it is open to the appellant to file a complaint in this regard before the appropriate court.

Order Date :- 30.11.2023

Suraj Srivastav