

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7082 of 2023

Appellant :- Manoj Dwivedi And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ajay Sengar

Counsel for Respondent :- G.A.,Jitendra Kumar Ravat,Shivani Chaudhary

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

Learned counsel for the opposite party no.2 has filed counter affidavit today, let it be kept on record.

Learned counsel for the appellants refused to file any rejoinder affidavit.

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

By filing this appeal the order dated 29.11.2022 passed by the Special Judge (S.C./S.T. Act), Jalaun at Orai in Special Sessions Trial No.0029 of 2022 (Ram Sanahi Jatav Versus Manoj Dwivedi and Others) arising out of Complaint Case No.0048 of 2022, under Sections 323, 504, 506, 452 of Indian Penal Code, 1860 and 3(1) (r), (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Kotwali-Orai, District Jalaun is prayed to be set aside.

By impugned order dated 29.11.2022, the appellants have been summoned by the trial court to face trial under Sections 323, 504, 506, 452 IPC and Section 3(1) (r), (s) of SC/ST Act.

It is argued by the learned counsel for the appellants that previously regarding incident dated 18.07.2015 at 8:30 A.M. an application under Section 156(3) of Cr.P.C. dated 06.08.2015 was moved before the court concerned and on the basis of this application under Section 156(3) Cr.P.C. the FIR Case Crime No.2466 of 2015 was registered on 01.10.2015 against the appellants and two other persons. In this FIR, Sriman Singh and Ravi only were shown to be the witnesses of the incident. After investigation, the final report was submitted by the investigating officer on the ground that as a case of theft was registered against

Gaurav, the son of the first informant, so on the false ground this FIR was lodged. Against this final report, protest petition was filed, which was registered as a complaint. This complaint was dismissed in default on 14.01.2018. After more than four and a half year of dismissal of complaint the present complaint has been filed on 29.07.2022 regarding the same incident, mentioning the names of two new witnesses and after the statement of the complainant under Section 200 Cr.P.C. and the statements of the witnesses under Section 202 Cr.P.C. the impugned order summoning the appellants has been passed. It is argued that in the FIR the incident is shown to be taken place inside the house, while in the complaint filed after more than 7 years, the incident is shown both outside the house and inside the house. The names of the witnesses have been changed and it is no where the version in the FIR that the appellants belong to a general category, hence, it is claimed that after 7 years of the incident and after more than four and a half year of the dismissed in default of the earlier complaint of the opposite party no.2, the present complaint has been filed on the false grounds with the necessary improvements, wherein the offence under sections of IPC and specifically the offence under sections of SC/ST Act cannot be said to be made out, hence, the prayer is made accordingly.

Learned counsel for the opposite party no.2 opposed the prayer and submitted that the opposite party no.2/ complainant could not get the information regarding the dismissal of his complaint on 04.01.2018, so the present complaint was filed on 29.07.2022. Again, it is said that in the complaint in the very clear words it has been mentioned that the appellants/ accused persons belong to general category. It is also submitted that FIR is not an encyclopedia. In fact, the opposite party no.2 was sitting on the door of his house, the accused persons came, abused him, uttered caste based words and gave threat of life. When the opposite party no.2/ complainant and his family members ran inside the house to save themselves then all the accused persons entered the house and thrashed them inside the house. Witnesses Harishchandra and Ram Milan, who had come to meet opposite party no.2 saw the incident and saved the complainant and his family members. It is further submitted that it is not mentioned in the memo of appeal that offence under section of SC/ST Act is not made out against the appellants as the incident took place outside the house. It is also submitted that the counter affidavit of the opposite party no.2 is an uncontroverted document as rejoinder affidavit has not been filed by the appellants against this counter affidavit.

From the perusal of the record, it is found that the complainant in his statement under Section 200 Cr.P.C. and the witnesses in their statements under Section 202 Cr.P.C. have supported the version of the complaint and on the basis of these statements the trial court has summoned the appellants to face trial under the above mentioned sections. But if we go through the first information report therein the clear allegation is that the first informant was sitting inside his house when the appellants and other co-accused persons entered the house, hurled wild and caste based abuses, thrashed the first informant and his family members. After 7 years of the first complaint in the present complaint the complainant has improved his version and shown the offence of hurling caste based abuses committed outside his house. Otherwise also neither in the FIR nor in the complaint or in the statements of the complainant or his witnesses, it has come that these caste based words were hurled with the intention to humiliate the opposite party no.2 and his family members because of the fact that they belong to the SC/ST community. So far as the offence under Sections of IPC is concerned, this is the factual dispute which shall be decided by the trial court after the evidence of the parties.

It is true that it has not been mentioned in the grounds of appeal that the incident took place outside the house so the offence under Section 3(1) (x), (xi) of SC/ST Act cannot be said to be made out, but it is very much mentioned in paragraph-3 of the memo of appeal that there is no mention in the allegations of the opposite party no.2 that the opposite party no.2 and his family members were hurled caste based abuses on the ground that they belonged to the SC/ST community. Otherwise also, if some argument is not placed by the learned counsel for the appellants before the Court, the Court is not bound with his argument only. It is the duty of the Court to look into the matter that what offence can be said to be made out on the basis of the pleadings of the parties.

The appeal is **allowed** partly. The summoning order dated 29.11.2022 is confirmed with regard to Sections 323, 504, 506, 452 IPC and it is set aside with regard to Sections 3(1) (r), (s) of SC/ST Act.

Order Date :- 16.10.2023
Radhika