

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7936 of 2023

Appellant :- Doctor Salim

Respondent :- State of U.P. and Another

Counsel for Appellant :- Harshit Pathak, Anurag Pathak

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

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

This criminal appeal has been filed by the appellant with prayer to stay the effect and operation of the impugned cognizance order dated 11.7.2022 and the entire proceedings in case No. 1748 of 2022 arising out of Case Crime No. 101 of 2022, under section 504 and 506 I.P.C and section 3(2)(Va) of SC/ST Act, Police Station Mirzapur, District Saharanpur.

It is submitted by learned counsel for the appellant that in this case a false allegation was made in the F.I.R against the appellant for making abuse relating to the caste of the informant. Though he has no concern with the matter between the co-accused and the informant. For the purpose of harassment the present F.I.R has been lodged against him with other co-accused person. There is no any independent witnesses of the alleged incident except the statements of interested witnesses which cannot be said to be reliable. Even though after investigation the charge sheet was filed by the Investigating Officer against the appellant also with other co-accused persons. The learned court concerned also took cognizance by order dated 11.7.2022 without considering all these facts and material on record, therefore, request to set aside the order and allow the appeal.

On the other hand, learned AGA opposed the prayer and contended that the order passed by learned court concerned is lawful and based on material on record as collected during the investigation of the case.

Considering the facts and circumstances of the case, submissions made by learned counsel for the appellant, learned A.G.A as well as order passed by learned court concerned, it appears that in this case the allegation of abusing with words relating to the caste of informant was made. During investigation the statements of

witnesses were recorded in which they supported the aforesaid allegation. Only on account of the witnesses being interested, their testimony cannot be discarded and also the fact that the independent witnesses were not present at the time of alleged occurrence. The learned court concerned passed the order of cognizance on 11.7.2022 after considering the material on record as collected during investigation after applying its judicial mind. There appears no illegality or impropriety in the aforesaid order but this appeal being devoid of merit, is liable to be dismissed.

Hence, this appeal is ***dismissed***.

However, the appellant is an option to move discharge application before the learned court concerned at an appropriate stage which shall be heard and disposed of in accordance with law by the learned court while considering the material on record.

Order Date :- 14.12.2023

G.S