

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7294 of 2023

Appellant :- Ajit Yadav And 2 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Shyam Sunder Mishra, Rajendra Prasad Yadav

Counsel for Respondent :- G.A., Mool Chandra Maurya

Hon'ble Subhash Chandra Sharma, J.

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

Facts in brief are that out of 0.028 hectare of Arazi No. 909, 0.011 hectare was sold by Smt. Phoolmati @ Phoola in the year 2005 in favour of respondent no. 2/Sonmati on the basis of which she made some construction on the aforesaid land for residential purposes. Later on, the land was transferred by Smt. Phoolmati in favour of appellants, who razed the construction on the land and on interference, insulted and also threatened to her by using words relating to her caste. Regarding this incident an F.I.R. was lodged as Crime No. 0062 of 2018, under Sections 447, 419, 420, 467, 468, 471, 506 and Sections 3(2)v and 3(2)va S.C./S.T. Act. After investigation final report was submitted by the I.O. against which protest petition was filed before the learned court concerned which was treated as complaint and in pursuance thereto statement of the informant/respondent no. 2 was recorded under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C. After considering the statements and allegation, an order for summoning the appellants was passed by learned court concerned under Sections 504, 506, 427, 419, 420 I.P.C. and Section 3(2)va S.C./S.T. Act on 30.07.2022. Being aggrieved with this order present appeal has been preferred before this Court.

Learned counsel for the appellants submitted that in this case the allegations made by the respondent no. 2 were found to be false during the course of investigation that was the reason final report was filed by the police. The protest petition was moved on the part of respondent no. 2 with false allegation against the appellants that was treated as complaint and after recording the statements of the complainant and other witnesses, those are related to the complainant herself, present summoning order was passed by the

court concerned not on the material collected during investigation by the I.O. It is also submitted that the witnesses who were examined under Sections 200 and 202 Cr.P.C. are closely related to the complainant, as such, those statements cannot be said to be reliable. Therefore, the order passed on the basis of those statements cannot be said to be lawful, but it is only for the harassment of the appellants. It is further submitted that the land in dispute was purchased by the appellants from Smt. Phoolmati through registered deed, as a result they came into possession, therefore, there was no question to make any kind of interference in the possession of complainant, who was trespasser on the aforesaid land on the basis of unregistered document, which was also not considered by the learned S.D.M. under the proceedings under Section 145 Cr.P.C. between the parties and the proceedings were dropped by order dated 20.03.2020. This order passed by learned S.D.M. was also not taken into consideration by the learned Special Judge while passing the order for summoning. In this way also, the order in question cannot be said to be lawful, therefore, request to set it aside and allow the appeal.

Learned counsel for the respondent no. 2 as well as learned A.G.A. opposed the prayer as aforesaid and urged that in this case no proper investigation was conducted by I.O. and final report was submitted in favour of both the appellants that was the reason protest petition was filed by the respondent no. 2 before the learned court concerned which was treated as complaint and statements of the complainant and other witnesses were recorded. Those statements were taken into consideration by the learned court concerned while passing the order in question and it was found that the land was in possession of the respondent no. 2 and she was dispossessed by the appellants after razing her construction and also she was insulted with words relating to her caste. Even the learned S.D.M. has also mentioned this fact in operative portion of the order passed by him in the proceedings under Section 145 Cr.P.C. which also establishes the dispute relating to the possession on the aforesaid land between the parties though it was on the basis of unregistered document, but this Court is not to decide the question of title which is to be decided by the civil/revenue court. Even the true owner of land cannot eject the trespasser by force without taking recourse of law. In this way, it cannot be said that the act of the appellants to dispossess the respondent no. 2 from her possession on the land in dispute was lawful, but it was illegal. It is also urged that the reliability of the statement of the witnesses on the basis of being relative cannot be questioned at this stage and it cannot be discarded threshold.

Considering the facts and circumstances of the case, submission made by learned counsel for the appellants as well as learned counsel for the respondent no. 2 along with learned A.G.A., perusal of record, order in question, the statements made by complainant/respondent no. 2, the witnesses as examined under Section 202 Cr.P.C., there appears no ground to set aside the order passed by learned Special Judge (S.C./S.T. Act), Azamgarh on 30.07.2022 as being not illegal and inappropriate, but this appeal being devoid of merit is liable to be dismissed.

Accordingly, the present appeal is dismissed.

However, it is directed that in case, the appellants appear and move bail application before the court concerned within a period of 30 days from today, it will be heard and decided expeditiously as far as possible in the light of case decided by Hon'ble the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another***, LL 2022 SC 577 decided on 11.07.2022.

Order Date :- 30.11.2023

Sunil Kr. Gupta