

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7403 of 2023

Appellant :- Vijay Pal

Respondent :- State of U.P. and Another

Counsel for Appellant :- Nagendra Kumar Mishra, Amit Kumar Mishra

Counsel for Respondent :- G.A.

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

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

No one has put in appearance for opposite party no.2 despite of sufficient service of notice.

This appeal has been filed against the order dated 31.05.2023 passed by the Addl. District and Sessions Judge/ Special Judge, S.C./S.T. Act, Baghpat in Complaint Case No.25 of 2023 (Computer No.13/2023), Smt. Raj Kumari Vs. Vijay Pal, under Section 323 IPC & Section 3(2) (va) of SC/ST Act, Police Station Binauli, District Baghpat.

By impugned order, the appellant has been summoned by the trial court to face trial under Section 323 I.P.C. and Section 3(2) (va) SC/ST Act.

It is argued by the learned counsel for the appellant that regarding incident dated 21.01.2023 at 11 o'clock in the noon the present complaint has been filed by the opposite party no.2. While regarding incident of the same day i.e. 21.01.2023 showing it to be at 10:00 A.M. an FIR was lodged by the appellant and in counterblast of that FIR the present complaint has been filed by the opposite party no.2. There are contradictions in the version of the complaint and the statement of the complainant under Section 200 Cr.P.C., wherein in the complaint she has mentioned that the appellant broke her teeth, while in her statement it is said that the blow of the appellant on her teeth shook her teeth, those teeth were uprooted after 15 days. It is also argued that the court concerned has not recorded its satisfaction to summon the accused in its order, hence, the prayer is made accordingly.

Learned A.G.A, however, opposed the prayer.

From the perusal of the record, it is found that in the complaint dated 10.02.2023 opposite party no.2 has disclosed the incident to be dated 21.01.2023 at 11 o'clock in the noon, while regarding incident dated 21.01.2023 at 10:00 A.M. an application under Section 156(3) Cr.P.C. was moved by the appellant on 20.03.2023 and the FIR on the basis of this application under Section 156 (3) Cr.P.C. was lodged on 04.05.2023, thus, it is clear that the incident dated 21.01.2023 is admitted to both the parties, but the complaint by opposite party no.2 has been filed on 10.02.2023, while an application under Section 156(3) Cr.P.C. on the basis of which an FIR was lodged on behalf of the appellant was moved on 20.03.2023 i.e. after one month and 10 days of the complaint filed by the opposite party no.2. Thus, the argument of the learned counsel for the appellant becomes false that the complaint of the opposite party no.2 has been filed in the counterblast of the FIR filed by the appellant.

No injury report of the appellant has been placed before the Court. So far as the argument regarding contradictions between the statement of the victim/complainant under Section 200 Cr.P.C. and the version of complaint is concerned the core allegation is the same that due to thrashing of the appellant the teeth of the victim were uprooted. So far as the registering the satisfaction of the trial court is concerned, if we go through the impugned order after mentioning the facts and referring the statements of the complainant and the witnesses the trial court discussed the merits in its order dated 31.05.2023 in the first paragraph of second page of the order on the basis of the discussion made the trial court found a prima facie case against the appellant.

In the opinion of the Court, the order of the trial court is well discussed and well founded order passed on the basis of evidence on record.

There is no ground to interfere with the impugned order.

The appeal is **dismissed**, accordingly.

Order Date :- 16.10.2023

Radhika