

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7811 of 2023

Appellant :- Om Prakash And 4 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vinod Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

None is present for the respondents even after notice.

Heard learned counsel for the appellants 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 set aside and stay the effect and operation of the the summoning order dated 01.03.2023 in Complaint Case No. 68 of 2022 (Smt Madhuri Devi Vs. Om Prakash and others) passed by Special Judge (S.C./S.T.), Prayagraj

It is submitted by learned counsel for the appellants that in this case a complaint no. 68 of 2022 was filed by the respondent Smt Madhuri Devi against the appellants those belong to the same family. It is submitted that in Para 4 of the complaint it has clearly been mentioned that incident took place within the house of the complainant likewise the complainant also stated in her statement under Section 200 Cr.P.C. before the learned court that incident took place within the house. Other witnesses P.W. 1 Subhawati also made similar statement likewise P.W. 2 Kiran Devi. Where incident took place within the house it cannot be said to be a public place and in public view and when incident does not occur on the public place and in public view Section 3(1)(X) of S.C./S.T. Act cannot be applied but learned court concerned did not consider these facts and the provisions of law but passed the order for summoning on 01.03.2023 which cannot be said to be lawful and based on record, therefore, request to set it aside and allow the appeal.

Learned A.G.A. opposed the prayer as aforesaid but could not dispute the fact that the incident took place within the house as mentioned in the complaint and in the statements of the complainant as well as other witnesses examined before the

learned court.

Considering the facts and circumstances of the case, submissions made by learned counsel for the appellants as well as learned A.G.A. for the State, the contents as mentioned in the complaint, statements of complainant and other witnesses recorded as P.W. 1 and P.W. 2, it appears that incident is said to have taken place within the house whereas Section 3(1)(X) of S.C./S.T. Act requires the incident to have taken place in public view. The house cannot be said to be a public place and in public view, therefore provisions as contained under Section 3(1)(X) cannot be said to apply in such case. In view of this the order passed by the learned court concerned dated 01.03.2023 cannot be said to be lawful and appropriate, as a result it cannot sustain in the eyes of law and is liable to be set aside.

Accordingly, the order dated 01.03.2023 is hereby set aside and appeal is ***allowed*** with direction to the learned court to pass the order afresh on the basis of material on record in accordance with law.

Order Date :- 7.12.2023

Suraj Srivastav