

Court No. - 84

Case :- CRIMINAL APPEAL No. - 5592 of 2019

Appellant :- Smt. Anita

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Pawan Singh Pundir

Counsel for Respondent :- G.A., Rizwan Ullah Siddiqui

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

1. Heard learned counsel for appellant, learned A.G.A. for State and perused the record. No one is present on behalf of opposite party no. 2 at time of arguments.

2. This criminal appeal has been preferred against the order dated 10.06.2019 whereby the application of appellant moved under Section 156(3) Cr.P.C. before the trial court was rejected.

3. As per facts of the case an application under Section 156(3) Cr.P.C. was moved by appellant on 08.05.2019 before the court concerned with the allegation that opposite party nos. 2 & 3 Ankit and Rajkumar are the miscreant type of persons, who used to demand of Rs. 5 lac from the husband of the appellant. They used to extend threat of life also if this amount of ransom was not paid to them. The husband of the appellant left to attend his office because of the terror of these persons. On 15.02.2019 at 1:15 p.m. the appellant was alone in her house, both the accused persons along with 3-4 unknown person entered into her house forcibly and started inquiring about the husband of the first informant that he had not paid Rs. 5 lac till date, when the appellant replied that they are not in a position to give Rs. 5 lac., both the accused persons started abusing and hurling caste based words and also started thrashing her. 3-4 unknown persons started throwing the household items. Ankit and Rajkumar dragged her down, tore her clothes and started obscene activities with her. After her hue and cry, witnesses Amit, Laxmichand and others came and all the accused persons fled away from there giving threat of life. When husband of the appellant came, they moved an application in the police station concerned. They also sent an application on 21.02.2019 by registered post to S.S.P. concerned. On 07.03.2019 various authorities including Chief Minister of Uttar Pradesh and Rashtriya Manvadhikar Ayog, SC/ST Commission, were given information of the incident through e-mail but all in vain. As

prayer was made to get register an FIR in the police station concerned against opposite party nos. 2 and 3 so the report was summoned from the police station concerned whereby report was received that the husband of the appellant and opposite party nos. 2 and 3 were indulged in a business by name of 'Delivery Nidhi Limited', Head Office Mandi Road, Rana Palace, Luxar Road, Purkaji. As the firm went into loss, both the parties got separated and as per report of the police station no such incident was found to had taken place. On the basis of this report of the police station concerned, trial court passed the impugned order with the finding that on the basis of police report no incident is found to have taken place. Neither registry receipt regarding letter sent to the S.S.P. concerned and nor medical report was placed before the court so the application under Section 156(3) Cr.P.C. was rejected.

4. Learned counsel for the appellant submitted that as per his application under Section 156(3) Cr.P.C. a cognizable offence appears to have been taken place so the FIR be ordered to be lodged and the impugned order be set aside.

5. Learned A.G.A. vehemently opposed the prayer.

6. From the perusal of record, it is found that on the application dated 08.05.2019 moved by the appellant before the trial court, report was sought from the police station. Inquiry was done by the police and report was submitted that no such incident took place. However, this fact came into light that husband of the appellant and opposite party nos. 2 & 3 had started a joint venture and when that business went into loss, they got separated and as per learned counsel for appellant in the counter affidavit, learned counsel for opposite party nos. 2 & 3 has admitted the due of Rs. 70,000/- towards them.

7. However, as per law the only purpose of the report sought from the police was to know whether an FIR was lodged at the police station regarding the matter or not. From the report it can be concluded that no FIR was lodged at the police station regarding the incident mentioned in the application under Section 156(3) Cr.P.C. If the report is not lodged in the police station concerned the person as per Section 154(3) of Cr.P.C. may send a registered letter to SSP/SP concerned. The appellant in his application has mentioned that on 21.02.2019 a letter was sent to SSP concerned but as per order of the trial court, no registry receipt dated 21.02.2019 was placed before trial court. Before this court also though the copy of the application to the SSP concerned dated 21.02.2019 has been placed but no registry receipt regarding

dispatch of this application to the SSP concerned, has been placed before court though registry receipt dated 05.03.2019 has been placed before the court which is said to have send to SSP concerned but all the four receipts placed before court, appended at page-32 of the paper book, are send to different authorities but not to SSP concerned.

8. Hence, the condition precedent mentioned in Section 155(3) Cr.P.C. has not been fulfilled by the appellant. Otherwise also the appellant has concealed true facts that there was dispute between the parties regarding business which was started by her husband and the opposite party nos. 2 & 3 that went into loss. He has not come before the court with clean hands.

9. In the opinion of the Court, there is no good grounds to allow the appeal and order to register an FIR on the application of the appellant. The order of the trial court does not suffer from any infirmity. The criminal appeal is hereby **dismissed**.

Order Date :- 30.10.2023

Sharad/-