

Court No. - 80

Case :- CRIMINAL APPEAL No. - 7925 of 2023

Appellant :- Ajendra Pratap Singh And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Birendra Singh, ,Yash Pratap Singh

Counsel for Respondent :- G.A.,Alok Tiwari

Hon'ble Subhash Chandra Sharma,J.

1. Heard learned counsel for the appellants, learned counsel for the respondents, learned A.G.A. for State and perused the record.

2. This criminal appeal has been filed by the appellants with prayer to set aside the impugned charge sheet No. 36/2023 dated 8.2.2023 arising out of Crime No. 508 of 2022, under Sections 420, 352, 504, 506 IPC and Section 3(1)(Da), 3(1) (dha) and 3(2)(Va) S.C./S.T. Act, Police Station Sungarhi, District Pilibhit, upon which the Special Judge (SC/ST) Act, Pilibhit took cognizance on 13.2.2023 and to stay the further proceedings of the Sessions Trial No. 633 of 2023.

3. It is submitted in this case that the FIR was lodged by the informant with false allegations in counterblast after delay of six months from the incident alleged to have taken place on 22.4.2022 at about 8:50 P.M. in the night. It is also submitted that during investigation the location of witnesses Sarvajeet Maurya, Jamal Ullah and Zahid Noor was found to be on other place than the incident. The statements of some other independent witnesses were also recorded by the Investigating Officer on the basis of which report was prepared to file a final report but the Supervising Officer directed the Investigating Officer to make further investigation on some specific points. As a result, after further

investigation charge sheet was filed by the Investigating Officer in this case against appellants after recording the statement of the witnesses those were already said to be recorded by the previous Investigating Officer. The learned Special Judge (SC/ST Act) also took cognizance of the offences without perusing the material on record as collected during the course of investigation by the Investigating Officer. It shows none application of judicial mind. It is also submitted that the incident has not occurred on public place and public view, therefore, offence under SC/ST Act cannot be said to be made out. In this way the order of cognizance as passed by learned Special Judge (SC/ST Act) being illegal and inappropriate and beyond the material on record and is liable to be set aside and appeal be allowed. He relied his argument on the case of **Ramesh Chandra Vaishya Vs. The State of Uttar Pradesh and another 2023 LiveLaw (SC) 469** and **B. Venkateswaran & others Vs. P. Bakthavatchalam 2022 LiveLaw (SC) 14**.

4. Learned counsel for the respondent as well as learned AGA opposed the prayer and contended that the CDR was taken by previous Investigating Officer during the course of investigation which also show the presence of the witnesses Sarvajeet Maurya, Jamal Ullah and Zahid Noor in the same district on nearby places at about the time of alleged incident. On the basis of the CDR, it cannot be said that their presence was doubtful or they were not present at the place of occurrence at this very time. However, during the course of further investigation their statements were recorded by the second Investigating Officer. They stated the whole story as occurred in their presence. They never denied their presence on the place on their part. Other witnesses were also recorded who supported the prosecution version. It is also contended that the incident took place outside the chamber of Dr.

Prabhakar Sharma which is under a Gulmohar tree on the roadside. This place is public place and in public view, therefore it cannot be said that incident took place inside the chamber that was not public place and public view. The provisions of SC/ST Act will attract to the present incident where words relating to the caste of informant were used by the appellants while committing the offence. All these facts and circumstances of the case were taken into consideration by the learned Special Judge (SC/ST Act) while passing the order in question. At this stage, the veracity of the statements of witnesses on whose statements the prosecution relies its case cannot be tested but it is possible only during trial. Even on the basis of witnesses said to be partisan, their statements cannot be discarded. In this way the order passed by learned court concerned cannot be said not to be based on the material on record and without application of mind but this appeal, being devoid of merit, is liable to be dismissed.

5. Considering the facts and circumstances of the case, submissions made by learned counsel for the parties and perusal of record as well as order passed by learned court concerned there appears no any illegality or impropriety in the order passed by learned Special Judge (SC/ST Act) while taking cognizance of the offences by order dated 13.2.2023. It shows application of judicial mind. Therefore it does not warrant interference by this Court but this appeal being devoid of merit, is liable to be dismissed.

6. Accordingly, the present appeal is **dismissed**.

7. However the appellants may have an option to move for discharge application before the learned court at an appropriate stage which shall be heard and decided in accordance with law. Further, if the appellants appear and move bail application before

the learned court concerned, it shall be heard and disposed of as expeditiously as possible in the light of law as laid down by the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another LL 2022 SC 577 decided on 11.07.2022.**

Order Date :- 2.12.2023

Aiman