

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8252 of 2023

Appellant :- Mohd. Arif And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Rajesh Kumar Mishra, Rajeev Kumar Tripathi

Counsel for Respondent :- G.A., Laxmi Narayan Rathour

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

Supplementary affidavit filed on behalf of the appellants and the counter affidavit filed on behalf of the opp. party no. 2 are taken on record.

Heard the learned counsel for the appellant and learned counsel for the opp. party no. 2 and perused the record.

This appeal has been preferred against the order dated 13.7.2023 and order dated 10.5.2023 passed by Special Judge SC/ST Act Jalaun at Orai in complaint case no. 88 of 2022, Smt. Mamta Vs. Mohd Arif and others, under sections 354, 387, 323, 504, 506 I.P.C. and sections 3(1)(da) (dha) of SC/ST Act, police station Jalaun District Jalaun.

Vide order dated 10.5.2023 bailable warrants were issued against the appellants by the trial court. Vide order dated 13.7.2023 the discharge application of the appellants was dismissed by the trial court.

As per the facts of the case, in compliance of the order dated 29.5.2023 of this court, the appellants moved a discharge application appended at page 85 of the paper book which was rejected vide the impugned order dated 13.7.2023.

It is argued by the learned counsel for the appellants that the opp. party no. 2 runs a fake Maternity hospital in the town when the wife of appellant no. 1 was taken there for delivery, the delivery was not done properly. When the condition of the newly born child and his mother started deteriorating, they were taken to various other hospitals. Both the newly born child and mother suffered a lot and their lives could hardly be saved. Rs. one lac was spent in their treatment by the appellant no. 1. When in this regard they

made a complaint before the District Magistrate concerned, an inquiry was done vide order dated 22.8.2022 appended at page 55 of the paper book. The order was made to seize the hospital concerned and the order was also made to lodge an FIR against the opp. party no. 2 on 24.8.2022 under sections 419, 420 I.P.C. and section 15(2) of Indian Medical Council Act, 1956. In counterblast of that application dated 4.8.2022 moved before the Distinct Magistrate and after lodging FIR against the opp. party no. 2 the present complaint was filed with wrong facts by the opp. party no. 2.

It is further submitted that neither the appellants went to the house of the opp. party no. 2 nor the wife of the appellant no. 1 delivered the child on road rather the delivery was made in the fake Maternity Home of the opp. party no. 2. In the absence of due care and caution, both the newly born child and mother had to suffer a lot, hence, the prayer is made accordingly.

Learned counsel for the opp. party no. 2 opposed the prayer and submitted that opp. party no. 2 does not run any maternity home nor the delivery of the wife of the appellant no. 1 was done in the said hospital. The opp. party no. 2 is a G.N.M. (General Nursing and Midwifery) so the appellants and the opp. party no. 2 were well known to each other and when the appellants came for help in the delivery of the wife of the appellant no. 1, she delivered a baby on RCC road.

Going through the impugned order, it is found that the trial court while rejecting the discharge application of the appellants found that on the basis of statements under sections 200 and 202 Cr.P.C. of the complainant and the witnesses respectively, a prima facie case was made out against the appellants.

If we go through the version of the complaint it is the case of the complainant that delivery of the child took place on road and regrading the treatment of both newly born child and mother, allegedly the expenses incurred Rs. 1 lac in the treatment is being demanded from the complainant by the appellants while as per the appellants delivery never took place on the road rather the child was born to the wife of the appellant no. 1 in nursing home of the opp. party no. 2 which was being run illegally. However, no document is placed before this court to show that the birth of the child to the wife of appellant no. 1 took place in the said nursing home of the opp. party no. 2. So the fact cannot be said to be prima facie proved before the court that delivery took place in the unauthorized nursing home of the opp. party no. 2. The version of

the appellants need to be proved after the evidence before the trial court. Otherwise also the finding of the trial court that the defence version or the documents are not to be seen at this stage of charge is a proper finding. It is the version of the appellants that opp. party no. 2 did not take any precaution and care of the child and the mother so they had to spend a lot of money in their treatment. This money incurred in the treatment of the newly born child and the mother is said to be demanded by the appellants from the opp. party no. 2. Whether the delivery took place in the nursing home of the opp. party no. 2 or the child was born on the road and whether any carelessness was there on the part of opp. party no. 2 or not and the facts placed before the trial court at the time of disposal of the discharge application by the appellants are to be decided by the trial court after evidence in the trial court.

In the opinion of the court, a prima facie case for framing charge against the appellants can be said to be made out on the basis of the evidence on record. No illegality is found in the impugned order passed by the trial court. The appeal being devoid of merits is liable to be dismissed.

It is accordingly dismissed.

Order Date :- 7.11.2023

Gss