

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8227 of 2023

Appellant :- Chiku @ Yash

Respondent :- State of U.P. and Another

Counsel for Appellant :- Brajesh Kumar Solanki,Pranjal Kesarwani

Counsel for Respondent :- G.A.,Shashi Prakash Pandey

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

Heard learned counsel for the appellant, learned counsel for the opposite party no.2, learned A.G.A. for the State-respondents and perused the record.

This appeal has been filed against the judgement and order dated 21.09.2022 passed by Special Judge SC/ST Act, Bulandshahar in Criminal Revision No. 572 of 2022 (State Vs. Chiku alias Yash and others) charge sheet dated 21.07.2022 submitted by the concerned police station Kotwali Nagar, District Bulandshahar, under Section 354Ka, 504, 323 I.P.C. and Section 3(2) (Va), 3(1) (da) SC/ST Act and to stay the proceeding of Case Crime No. 472 of 2022, Criminal Case No. 572 of 2022, under Sections 323, 354Ka, 504 I.P.C. and Section 3(1) Da, W and Section 3(2) (5) Ka SC/ST Act, in Session Case No 5078 of 2022 (State Vs. Chiku @ Yash and others).

By the impugned order dated 21.09.2022 the cognizance was taken Sections 323, 354Ka, 504 I.P.C. and Section 3(1) Da, w and Section 3(2) (5) Ka SC/ST Act by the trial court against appellant and one more person.

It is argued by the learned counsel for the appellant that neither in the whole first information report nor in the statement under section 161 Cr.P.C. of the first informant, there is whisper of using any caste based words by the appellant. For the first time when on 21.06.2022 caste based certificate was got prepared after the statement under Section 161 Cr.P.C., the allegation of using caste based words came before the court only in the statement of victim under Section 164 Cr. P.C. Thus it is an improvement in the statement of the first informant. No medical report has been placed before the court. No statement of any independent witness has been placed before the Court, hence prayer is made accordingly.

Learned counsel for the opposite party no.2 submitted that as the opposite party is an illiterate villager so he could not get prepare the caste certificate earlier.

In the first information report, there is allegation that when the opposite party no.2. was going to the shop for purchase of bottle of milk at 9.45 P.M., in the way near the house of Vijay Yadav, she met Chiku @ Yash and his four companions, seeing her, they started using incident language and hurling abuses. When she resisted Chiku @ Yash, assisted by one boy caught hold of the informant. The first

informant after releasing her hand came back to her house and informed the police, till the police reached at the spot, all the accused persons made good their escape.

Thus in this report, there is no mention of any caste based words or abuses used by the appellant. For the first time after about more than 15 days, in the statement of victim under Section 164 Cr. P.C. caste based words are said to have been used by the appellant. In the statement of the husband of the first informant also, no specific caste based words is mentioned which is said to be used by the accused persons.

So far as cognizance under Section 354Ka, 504, 323 I.P.C. is concerned, the allegation of offence under these sections shall be proved after evidence of the parties. So far as the offence under Section 3(1) Da, w and Section 3(2) (5) Ka SC/ST Act is concerned for Section 3(1)(da) SC/ST Act intentional insult or intimidation with the intention to humiliate members of schedule caste or scheduled tribe in a place within public view is needed. The incident is said to have taken place on the road using of indecent language and the fact of catching hold of victim, were with the intention to humiliate the victim belonging to scheduled caste community or not shall be decided after the evidence. So far as the allegation under Section 3(2) (5) Ka SC/ST Act is concerned, for this offence, no specific words are needed to be used by the accused and so far as offence under section 3(1)w of SC/ST Act is concerned, it is regarding touching of women belonging to Schedule caste community. In the first information report, there is clear allegation that accused caught hold of the victim.

In the opinion of the Court, as charge sheet was filed on the basis of the evidence on record collected by the Investigating officer and on the basis of charge sheet, cognizance has been taken by the trial court. No good ground is found to interfere with the impugned order.

The appeal is ***dismissed***.

Order Date 20.11.2023

T.S.