

Court No. - 80

Case :- CRIMINAL APPEAL No. - 9226 of 2023

Appellant :- Phool Chandra And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Kamlesh Kumar Yadav

Counsel for Respondent :- G.A.,Jainendra Kumar Pandey

Hon'ble Subhash Chandra Sharma,J.

1. Heard learned counsel for the appellants, learned counsel for the respondent and learned A.G.A. for the State.
2. This criminal appeal has been filed by the appellants with prayer to set aside the impugned summoning order dated 24.2.2023 passed by Special Judge (SC/ST Act), Kaushambi in Case No. 58 of 2023 under Sections 447, 341, 323, 504, 506 IPC and Section 3(2)(Va), 3(1)(Dha) S.C./S.T. Act arising out of charge sheet dated 4.12.2022, Police Station Karari, District Kaushambi.
3. Counter affidavit filed today is taken on record.
4. It is submitted in this case that incident is said to have taken place on 24.10.2022 but FIR was lodged on 15.11.2022 after inordinate delay by concocting false story for insulting the respondent by use of words related to his caste and also making assault with lathi and danda. During the course of investigation, no proper material was collected by the Investigating Officer but charge-sheet was filed on the basis of insufficient material. It is also submitted that there was a civil dispute between both the parties regarding which a civil suit is still pending in which the order of status-quo was also passed which is still in existence. It is also submitted that there was dispute relating to construction of

toilet on the bhumidhari land of the appellant which was got removed by the revenue authorities, in retaliation thereof present FIR was lodged with false allegation. No any injury was caused to the respondent or to any other person but the injury report is manipulated. The Investigating Officer also not considered the affidavits filed before him by independent witnesses of the village but formed the opinion regarding prima facie case and submitted charge-sheet. This cannot be appropriate. Learned court concerned also took cognizance of the offences by order dated 24.2.2023 without considering these facts which cannot be said to be lawful. Therefore requests to set aside the cognizance order and allow the appeal.

5. Learned counsel for the respondent as well as learned A.G.A. for the State opposed the prayer as aforesaid and contended that in this case there was dispute between both the parties in which the appellants made assault on the respondent and injuries were also caused to him regarding which there is medical report on record showing the injuries on his person. The words relating to the caste of the respondent were also used by the appellants to insult and humiliate him. The incident was witnessed by the witnesses whose statements were recorded by the Investigating Officer during the course of investigation on the basis of which charge-sheet was filed.

6. Learned court concerned took cognizance of the offences after applying it judicial mind on the basis of material on record. There is no illegality or impropriety in the order but appeal being devoid of merits is liable to be dismissed.

7. Considering the facts and circumstances of case and submissions made by learned counsels for both the parties as well

as learned A.G.A., perusal of records along with order dated 24.2.2023 passed by learned Special Judge (SC/ST Act), Kaushambi, it appears that there is allegation of abuse by use of words relating to the caste of the informant and also assault and causing injuries to him with lathi and danda. There is medical report showing the injuries on his person and the statements of other witnesses said to have witnessed the incident. On the basis of material collected during the course of investigation, charge-sheet was filed by the Investigating Officer and learned court concerned took cognizance of the offences by order dated 24.2.2023 after considering the material on record and applying its judicial mind. There appears no illegality or impropriety in the order dated 24.2.2023 but this Criminal Appeal is devoid of merits and is liable to be dismissed.

8. The instant Criminal Appeal is, accordingly, **dismissed**.

9. 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

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