

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8649 of 2023

Appellant :- Tej Dutt Bharadwaj

Respondent :- State of U.P. and Another

Counsel for Appellant :- Vijay Kumar Sharma

Counsel for Respondent :- G.A., Hemant Kumar, Pradeep Kumar Keshri

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

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

This criminal appeal has been filed against the cognizance order dated 15.03.2021 passed by learned court of Special Judge (SC/ST Act), Aligarh in Session Case No. 989/2021 (State Vs. Arjun Sharma and others), under Sections 323, 504, 324 IPC and Section 3(2)(VA) of SC/ST Act, P.S.- Banna Devi, District- Aligarh.

By the impugned order, cognizance has been taken under Sections 323, 504, 324 IPC and Section 3(2)(VA) of SC/ST Act against the appellant along with 2 other co-accused persons.

It is argued by learned counsel for appellant that he was not named in the FIR. In the statement of injured dated 08.08.2019, his name was disclosed for the first time. Medical which was done on the same night of the incident. The only injury found was the stitched wound on the head of the injured. The nature and duration of the injury could not be disclosed by Doctor. As per CDR the presence of appellant was not found on the spot on the date of incident. He was never indulged in any offence. The injured came in his hospital for treatment and he has been falsely implicated. Hence, prayer is made accordingly.

Learned counsel for opposite party no. 2 opposed the prayer and submitted that non bailable warrant has been issued against the appellant by the trial court vide order dated 10.12.2021 and since then the appellant is absconding. As per trial court record, he is not participating in the proceedings in the trial court. It is further argued that on the basis of statement recorded by I.O. present accused was found indulged in the incident and hence charge sheet has been filed against him.

From the perusal of record, it is found that regarding incident dated 05.08.2019, the FIR was lodged on 07.08.2019 but medical dated 05.08.2019 at 9:15 p.m. is appended with the paper book wherein one stitch wound on the right side of head 5 cm above from the eye brow and complaint of pain in back of chest have been mentioned in the injury report. Apart from the statements of the injured, statement of first informant and other witnesses the statement of Doctor is also on record, wherein Doctor has supported the prosecution version that the said second incident took place with the injured in the district hospital itself. It is true that at the time of medical examination, one stitched wound was found on the head of the injured and because of this wound being stitched the nature and the duration of injury could not be ascertained by Doctor. The second part of the FIR has been supported by the doctor that in the hospital also the injured was assaulted by two persons and same is the version of injured Munna Lal that he was taken to Malkhan Singh (Government Hospital) and was admitted there. On the call of accused Arjen the present appellant who is said to be the owner of the Devansh hospital and their companions attacked him with intention of causing his death. Same is the version of first informant the wife of the injured. So far as the CDR is concerned it shall be proved at the time of evidence. As in the first statement under Section 161 Cr.P.C. of the injured , the present appellant is named among the persons who had assaulted the injured and Doctor has also supported the prosecution version that injured was assaulted in the hospital by two persons and admittedly on the basis of evidence on record and I.O. has filed charge sheet against the appellant.

In the opinion of the Court, from the evidence on record prima facie case can be said to be made out to take cognizance against the appellant. There is no ground to interfere with the impugned order of the trial court. Hence, the appeal is **dismissed**. Impugned cognizance order dated 15.03.2021 is however confirmed.

Order Date :- 7.11.2023

Sharad/-