

**Court No. - 84**

**Case :-** CRIMINAL APPEAL No. - 8629 of 2023

**Appellant :-** Sandeep Singh

**Respondent :-** State of U.P. and Another

**Counsel for Appellant :-** Vinod Kumar Yadav

**Counsel for Respondent :-** G.A., Akhilesh Srivastava, Anil Kumar Srivastava

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

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

This appeal has been preferred against the judgment and order dated 26.05.2023 passed by the Additional District and Session Judge, Room No.15, Allahabad in Session Trial No.206/2016 arising out of Case Crime No. 302/ 2015 under Sections 354, 323 IPC and 3(1)(10) of S.C./S.T. Act, Police Station Jhunsi, District Prayagraj, whereby the discharge application of the appellant was rejected by the trial court.

As per FIR the allegation against the appellant is that on 03.04.2015 at 4:00 PM when the victim/ opposite party no.2 was on the roof of her house the appellant, who is the tenant of her father came on the roof and molested her and when opposed she was dragged by catching her hair. Wild abuses and caste based words were also used against her. Her clothes were torn by the appellant. After investigation charge-sheet was filed against the appellant under Sections 354, 323 IPC and 3(1) (x) of SC/ST Act.

It is argued by the learned counsel for the appellant that the incident is dated 03.04.2015 while FIR has been lodged on 22.06.2015 without explaining this inordinate delay. The mandatory provision of recording statement of the victim under Section 164 Cr.P.C. has not been followed and the statement of the alleged victim under Section 164 Cr.P.C. has not been record. In fact the father of the victim wanted to get his house vacated and the appellant was asking for sometime. In the meantime, the present FIR was lodged by the alleged victim on completely false allegations and when the discharge application was moved before the trial court it was rejected on the baseless ground. It is also argued that offence under Section 3(1) (x) of SC/ST is not made

out against the appellant as the incident cannot be said to have been taken place within public view, hence, the prayer is made accordingly.

Learned counsel for opposite party no.2 opposed the prayer and submitted that the appellant is an influential person. Because of his fear the opposite party no.2 could not register an FIR against him in time, while medical examination of the alleged victim was done on 07.04.2015 which is appended with the paper book. After this incident the appellant also lodged an FIR on 11.07.2015 showing the incident dated 10.04.2015 against the first informant and his family members on completely false grounds. The statement under Section 164 of Cr.P.C. of the victim could not be managed to be recorded by the investigating officer for which the victim cannot be said to be responsible.

From the perusal of the record, it is found that there is allegation of molestation, uttering caste based words and thrashing against the appellant. Regarding allegation of thrashing the first informant the injuries were caused on the person of the first informant regarding which the medical examination report dated 07.04.2015 is on record, wherein one abrasion over the lateral aspect of left forearm measuring 2cmx1cm/ 3cm is shown and the second injury is a contusion present over the anterior aspect of left fore legs 4cmx 2.5 cm just below for left knee joint. Both the injuries were found to be simple in nature. Injury no.1 was found to be caused by friction and the injury no.2 was found to be caused by some hard and blunt object. Duration was found to be 4 days back, which relates to the date of incident. Both the parties are said to have filed FIRs against each other. The FIR of the appellant is also filed after about three months of the incident. The trial court rejected the discharge application on the ground that from the evidence on record a prima facie case of framing charge was found to be made out against the appellant and all the objections raised by the appellant were found to be factual, which were found to be decided at the time of final disposal of the case.

In the FIR itself there is clear allegation against the appellant and the version of the FIR is supported by the medical report filed by the opposite party no.2. No evidence has been placed before the Court at this time to falsify the allegations of the FIR. Though, it is argued that incident did not take place within public view but as per FIR itself the incident took place on the roof and the roof, in the opinion of the Court, prima facie can be said to be having a public view.

In the opinion of the Court, the order of the trial court has been passed on the basis of evidence on record. It is a well founded and well discussed order, which needs no interference.

The appeal is **dismissed**, accordingly.

**Order Date :- 13.10.2023**

Radhika