

Court No. - 92

Case :- APPLICATION U/S 482 No. - 29382 of 2017

Applicant :- Thakur Prasad Tiwari

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Gulab Chandra

Counsel for Opposite Party :- G.A., Ganesh

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Gulab Chandra, learned counsel for the applicant and Sri K.K. Tripathi, learned counsel for the opposite party no.2. None appears on behalf of the opposite party no.2.2.

The instant application has been filed seeking quashing of the charge-sheet dated 03-05-2017 and cognizance order dated 17-08-2017 as well as entire proceedings of Criminal Case No. 1504 of 2017, State Vs. Thakur Prasad Tiwari, arising out of case crime no. 73 of 2017, under Sections 427, 504, 506 IPC and 3(1) (g) and 3(2)(v-a) of SC/ST Act, P.S. Ghorawal, district Sonbhadra.

3. In this case this Court had issued notice to the opposite party no.2 and in compliance of the aforesaid order, notice was issued to the opposite party no.2 and he has filed the counter affidavit and rejoinder affidavit has been filed on behalf of the applicant.

4. Learned counsel for the applicant further submits that the land on which the house of the opposite party no.2 exist is a bhumidhari land recorded in the revenue record in the name of the applicant herein, therefore, the opposite party no.2 is the illegal occupant of the said land in question. When the applicant asked the opposite party no.2 to vacate the said land illegally occupied by him, he has filed the instant criminal prosecution against the applicant herein. Therefore, the instant application is a malicious prosecution on behalf of the opposite party no.2 against the applicant herein, who is a recorded owner of the disputed land in question.

5. Learned counsel for the applicant further submits that from the allegations as made in the F.I.R. there are no averments with regard to any offence under the provisions of SC/ST Act, however, the F.I.R. has been registered under the provisions of SC/ST Act without there being any averments with regard to the same and subsequently in his statement recorded under Section 161 Cr.P.C. the only averments with regard to the allegations under SC/ST Act are that the applicant has abused of his caste and on asking by the

Investigating Officer he produced the caste certificate belonging to the scheduled caste. Therefore, learned counsel for the applicant submits that since there was no dispossession as such, offence under Section 3(1)(g) of the SC/ST Act is not made out. So far as the offences under Section 3(2)(v-a) of SC/ST Act is concerned, learned counsel for the applicant submits that for want of any averments that the opposite party no.2 belongs to the scheduled caste and only because the opposite party no.2 belongs to the scheduled caste he has been abused and insulted for his caste, the offence is not made out. However, in the instant case there is no such allegation in the F.I.R. or in the statement under Section 161 Cr.P.C. rather from the allegations it is apparent that the opposite party no.2 was in possession of piece of land since beginning and during investigation it has come on record from the report of the Lekhpal that the applicant herein has a bhumidhari right over the said land, therefore, there is no abuse for his caste, only because he belongs to scheduled caste, the offence under the aforesaid provisions of SC/ST Act is not made out against the applicant herein. Learned counsel for the applicant further submits that in the instant case the learned Magistrate has taken cognizance on the charge-sheet in the mechanical manner without any application of mind to the facts and circumstances of the instant case.

6. Learned counsel for the State submits that while exercising the powers under Section 482 Cr.P.C. the Court cannot go into the veracity of the allegations made against the accused persons. The Court has to consider the allegations as they are, if proved during trial, whether they would constitute an offence or not.

7. In response, learned counsel for the applicant submits that for the allegations as made in the F.I.R. as well as discovered during investigation, the offences under Section 3(1)(g) and 3(2) (v-a) of SC/ST Act are not attracted as such.

8. On the perusal of the cognizance order dated 17-08-2017, learned counsel for the State further submits that it has been taken in the mechanical manner and without any application of mind by the learned Magistrate.

9. Having heard the rival submissions made by the learned counsel for the parties, this Court has carefully gone through the record of the case and from the perusal of the F.I.R. it appears that there is not a single averment with regard to any offence under the provisions of SC/ST Act. The only allegation against the applicant is that the opposite party no.2 had claimed himself to be in occupation of the disputed land since long and there is an attempt

to dispossess by the applicant herein and from the statement under Section 161 Cr.P.C. also there is no averments with regard to any insult or intimidation for his caste in the public presence, therefore, in the considered opinion of this Court the offences under both the provisions of SC/ST Act are not made as there is no dispossession as such, the opposite party no.2 is still continues in possession of the disputed land, though as per the investigation and as per the report of the Lekhpal the applicant herein is the recorded owner of the said land, therefore, no offence under Section 3(1)(g) of SC/ST Act is made out at all. So far as offences under Section 3(2)(v-a) of SC/ST Act is concerned, there was no insult or intimidation only for his caste, the applicant being a recorded owner of the disputed land in question has attempted to dispossess the illegal occupant who claims to be in possession of the said land since long, therefore, from the allegations, the offence under Section 3(2)(v-a) is also not constituted, therefore, the charge-sheet under Sections 3(1)(g) and 3(2)(v-a) of SC/ST Act is hereby quashed against the applicant herein.

10. So far as the other offences are concerned since this Court has found that the cognizance has been taken by the learned Magistrate in a mechanical manner and without application of mind as mandate under Section 190 of the Code of Criminal Procedure, which provides that the Magistrate is not required to pass a detailed order, it is a primary duty of the learned Magistrate to examine whether the prima facie material is available for taking cognizance for the offences alleged. If on prima facie scrutiny the learned Magistrate found that the offences as alleged not made out, no cognizance can be taken by the learned Magistrate.

11. In view thereof from the perusal of the cognizance order dated 17-08-2017 it is apparent that the Magistrate has not done any scrutiny to ensure whether any offence as alleged in the charge-sheet has been made out from the material available before him, unless that is done the order taking cognizance is not valid, therefore, the order dated 17-08-2017 taking cognizance in the matter is hereby quashed and the matter is remanded back to the learned Magistrate to pass afresh order in accordance with law.

11. With the aforesaid observations, the instant application stands disposed of.

Order Date :- 3.11.2023/pks