

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8567 of 2023

Appellant :- Devanshu Bose And Another

Respondent :- State Of Uttar Pradesh Through Secretary Home
Lucknow And Others

Counsel for Appellant :- Devanshu Bose

Counsel for Respondent :- G.A., Darwari Lal, Rajesh Kumar
Verma

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

Heard appellant Devanshu Bose in person, learned counsel for opposite party nos. 2 & 3, learned A.G.A. for State and perused the record.

This criminal appeal has been filed against the order dated 20.07.2023 appended at page 29 of the paper book whereby the trial court decided the application under Section 227 Cr.P.C. for discharging the appellants from charges under Sections 452, 323, 504 IPC and Section 3(2) 5A, 3(1)(r), 3(1)(s) of SC/ST Act, P.S.- Tajganj, District- Agra.

By the impugned order the trial court discharged appellant Devanshu Bose from the charge under sections of SC/ST Act. His discharge application under sections of IPC and discharge application of Reeta Bose claiming discharge under sections of IPC and under sections of SC/ST Act, was rejected.

The appellant in person argued that ingredients of SC/ST Act are not fulfilled in the case in hand as according to the FIR itself it has been mentioned that the victims were assaulted because they had allegedly implicated the appellants. Thus, it is argued on the basis of judgment passed by Hon'ble Supreme Court in the case of **Hitesh Verma Versas The State of Uttarakhand and another, Criminal Appeal No. 707 of 2020 (arising out of SLP (Criminal) No. 3585 of 2020**, dated 05.11.2020, that as the caste based words alleged to have uttered by the appellants, as per FIR, were uttered not with an intention to humiliate the victims for the reason that the victims belonged to SC/ST community, rather there words were allegedly uttered because of their false implication. It is also argued that as the appellants have been charge sheeted under Section 452 IPC and as per the site plan prepared by the I.O., the incident took place inside the house hence, the offence under sections of SC/ST Act cannot be said to have taken place

within public view.

It has also been argued that there is no mens rea / intention in committing the offence. Hence, no offence can be said to be made out under sections of IPC or under SC/ST Act against the appellants.

The attention of the Court is also drawn by the appellant himself appearing in person towards the judgment passed by Hon'ble Supreme Court in the case of **Iqbal @ Bala and others Vs. State of U.P. and others, Criminal Appeal No. 2342 of 2023 (arising out of S.L.P. (Criminal) No. 50 of 2023), dated 08.08.2023**, and on the basis of this judgment it is argued that it is not enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and thus it is argued that mens rea is not proved from the version of FIR or the statement of witnesses. As prayer is made accordingly.

Learned counsel for opposite party nos. 2 & 3 opposed the prayer and drew the attention of the Court towards page -14 of the counter affidavit wherein in the statements of independent witnesses it has come that on hue and cry of Tara Devi and her husband Murari Lal, when they came out of their houses, both the appellants were fighting with Tara Devi and her husband and they were hurling caste based words and wild abuses. The victims were also thrashed at the hands of the appellants. Hence it is submitted that although the incident took place inside the house but it was seen by the public so the offence being committed inside the house would also be said to be taken place in the public view. It is further argued that there is civil dispute between the parties. It is also the argument of opposite counsel that though Devanshu Bose has been discharged by the trial court from the charges under sections of SC/ST Act but as his mother belonged to the general caste and she was married to a person of SC-ST community, she cannot be said to be person belonging to SC community because of this reason the trial court has rightly rejected the discharge application of Reeta Bose under the sections of SC/ST Act. Regarding allegations of sections 452, 323, 504 IPC, it is submitted that inside the house the opposite party nos. 2 & 3 were abused and thrashed at the hands of the appellants. In support of their version they have drawn the attention of the Court towards the medical certificate of both alleged victims whereby simple injuries are shown to be

caused to the alleged victims. Hence, the prayer is made accordingly.

From the perusal of record, it is found that in the FIR there is allegation that appellants entered into the house of the victims and uttered caste based words and wild abuse and also thrashed the old couple causing them injuries. As per FIR only this incident took place because the appellants had a misconception that the opposite party nos. 2 & 3/their son had accused the appellant (in some of the incident). Thus, as per the version of FIR itself the incident took place because of a false accusation of the appellants by the alleged victims. In the light of judgment of **Hitesh Verma (supra)** mere intentional insult or intimidation or hurling abuses or uttering caste based words knowing that the victims belong to SC-ST Community is not enough to constitute the offence under Sections of SC/ST Act rather this intentional insult or intimidation, humiliation hurling of abuses or caste based words or any offence specified in the scheduled of the Act must have been committed with the intention to humiliate the alleged victim only because he belongs to SC/ST community. In the whole FIR it is no where mentioned that caste based words were used by the appellants rather by appellant Reeta Bose because of the victims belonged to SC/ST Community.

Thus, in the opinion of the Court against appellant Reeta Bose prima facie also the offence under Sections 3(1)(r), 3(1)(s), 3(2) (VA) of SC/ST Act cannot be said to be made out.

So far as the Sections 452, 323, 504 IPC are concerned regarding injuries, medical examination reports of the alleged victims are on record, accordingly to the Doctor simple injuries were found the the person of the alleged victims. As per FIR itself the offence of hurling abuses and thrashing is committed in the house of the alleged victims and on hue and cry of the alleged victims the witnesses are said to have came and witnessed the incident. In the opinion of the Court, this dispute is to be decided by the trial court of the evidence of the parties. Hence, the appeal is **partly allowed**.

The impugned order dated 20.07.2023 is set aside against appellant Reeta Bose to the extent of Sections 3(2)(va), 3(1)(r), 3(1)(s) of SC/ST Act only, regarding Sections 452, 323, 504 I.P.C., the appeal is dismissed and the impugned order is hereby confirmed.

Order Date :- 6.11.2023/Sharad/-