

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8617 of 2023

Appellant :- Lalta Prasad Lodhi And 2 Other

Respondent :- State Of U.P And Another

Counsel for Appellant :- Ajendra Kumar

Counsel for Respondent :- G.A.,Pankaj Kumar,Sahibe Alam

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

Heard learned counsel for the appellants, learned A.G.A. for the State and perused the record.

No one has put in appearance for the opp. party no. 2, though the name of the learned counsel for the opp. party no. 2 appears in the cause list.

This appeal has been preferred against the summoning order dated 8.5.2023 passed by Special Judge SC/ST Act, Etah, S.C. No. 780 of 2023, whereby the trial court summoned appellants Lalta Prasad Lodhi and Mohobbat Singh Lodhi to face trial under sections 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act and Sukhveer Singh Lodhi under sections 323, 504, 506, 354-B I.P.C. and section 3(2)(va) of SC/ST Act, police station Rijor District Etah.

It is argued by the learned counsel for the appellants that previously regarding the incident an FIR was lodged against the appellants on the basis of an application u/s 156(3) Cr.P.C. moved by the opp. party no. 2. After investigation the final report was submitted on 19.3.2020 and the proceedings under section 182 Cr.P.C. were started against the first informant. Then the protest petition was filed by the opp. party no. 2 on 2.2.2021. That protest was registered as complaint. After the statements of complainant and the witnesses under sections 200 and 202 Cr.P.C. respectively, the impugned order summoning the appellants to face trial as above was passed.

It is further argued that it is a no injury case. Because of enmity of the civil dispute between the parties, the appellants have been falsely implicated in the crime. It is further submitted that in protest petition, in the statements of the complainant and witnesses, it has come that the incident took place inside the house, so uttering caste based words cannot be said to be taken place

within the public view, hence, the prayer is made accordingly.

Learned A.G.A. opposed the prayer and submitted that for the offence under section 323 I.P.C. no medical is needed. In the protest petition registered as complaint and in the statements of the complainant and the witnesses, there is allegation of hurling the wild abuses, using caste based words and giving threat of life. There is clear allegation that Sukhveer Singh Lodhi disrobbed Priti. Thus, offence under section 354-B I.P.C. was also committed, hence, the prayer is made accordingly.

From the above discussion, it is clear that throughout the protest petition registered as complaint and the statements of the complainant and the witnesses, there is allegation of thrashing, hurling abuses and giving threat of life against the appellants. There is also an allegation against Sukhveer that he caught hold of Priti and disrobbed her making her nude, hence, the ample evidence can be said to be on record for prima facie offence under section 323, 504, 506 I.P.C. against the appellants Lalta Prasad Lodhi and Mohobbat Singh Lodhi and offence under sections of Indian Penal Code along with section 354-B I.P.C. against Sukhveer Singh Lodhi. So far as offence under section 3(2)(va) of SC/ST Act is concerned, there is allegation in the complaint and in the statements of the witnesses that all the accused persons used caste based words against the first informant and his family members. For the offence under section 3(2)(va) of SC/ST Act the offence specified in schedule should be committed against a person knowing that such a person is a member of scheduled caste and scheduled tribe.

The Apex Court in judgment ***Hitesh Verma Versus 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** held that an offence under the Act of SC/ST is not established merely on the facts that the informant is a member of scheduled caste unless there is intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste.

In the present case also there is nothing on record that the dispute arose between the parties because of the opp. party no. 2 being a member of scheduled caste and scheduled tribe community, rather the dispute arose on the ground that the appellants allegedly wanted to encroach the land of the opp. party no. 2, hence, the offence under section 3(2)(va) of SC/ST Act cannot be said to be made out against the appellants.

The finding of the trial court summoning the accused persons under the provisions of Indian Penal Code, need not to interference. The order dated 8.5.2023 summoning the appellants Lalta Prasad Lodhi and Mohabbat Singh to face trial u/s 323, 504, 506 I.P.C. and summoning the appellant Sukhveer Singh Lodhi to face trial under section 323, 504, 506, 354-B I.P.C. is hereby confirmed the order of summoning all the appellants to face trial under section 3(2)(va) of SC/ST Act is hereby set aside.

The appeal is allowed partly.

Order Date :- 13.10.2023

Gss