

Court No. - 80

Case :- CRIMINAL APPEAL No. - 8973 of 2023

Appellant :- Rajesh Kushwaha And 4 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Anurag Tripathi

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

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

This criminal appeal has been filed by the appellants with prayer to allow the appeal and quash the charge sheet dated 25.5.2022 as well as entire proceedings of Special Session Trial No. 276 of 2023 arising out of Case Crime No. 131 of 2022, under sections 147, 323, 504, 506, 427, 452, 325 IPC and Sections 3(1)(Da) & 3(1)(Dha) S.C./S.T. Act, Police Station Tarya Sujan, District Kushinagar, pending in the court of Additional Sessions Judge/Special Judge S.C./S.T. (Prevention of Atrocities Act), Padrauna, Kushinagar.

It is submitted by learned counsel for the appellant that he is innocent and has been falsely implicated in the present case. In this case, F.I.R. was lodged by the respondents after inordinate delay by concocting a false story of commission of *Marpeet* by the appellants with the informant and his inmates. Further submitted that the girl belonging to the family of the appellants was enticed away by the respondents but later on, she was returned and handed over to them. For making pressure on the appellants not to proceed in that regard present F.I.R. was lodged with false allegation. The injuries said to be caused to the respondents are managed but were not caused in actual sense. Neither any fracture was caused nor any damage was found on the motorcycle. It is also submitted that the incident is said to have been taken place in the house of respondents which was not a public place, even though charge sheet was filed under S.C./S.T. Act, whereas no such offence can be said to be made out. Learned Special Judge S.C./S.T. Act did not consider all these facts and took cognizance of the offence while passing the order dated 28.2.2023 which cannot be said to be lawful, therefore, request to set it aside and allow the appeal. It is next submitted that this case is squarely covered with the case of *Hitesh Verma Vs State of Uttarakhand decided on 05.11.2020 by Hon'ble Supreme Court.*

On the other hand, learned AGA opposed the prayer and contended that in this case, the girl belonging to the family of the appellants came to the house of respondents in relation to which the appellants came at the house of the respondents and made assault causing injuries to several persons in which fracture was also caused in the leg of one Paras and other members sustained simple injuries. Words relating to the caste of the respondents were also uttered by the appellants while knowing the fact that they belong to S.C./S.T. caste, so it cannot be said that offence under S.C./S.T. Act is not made out. During the course of investigation, sufficient material was collected by the Investigating Officer and charge sheet was submitted on the basis of which cognizance order was passed by the learned court which cannot be said to be illegal.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties and perusal of record as well as order passed by learned Special Judge S.C./S.T. Act on 28.2.2023, it appears that in pursuance to lodging of F.I.R. investigation was conducted and charges were found to be established on the basis of material collected during investigation. Present case cannot be said to be squarely covered with the facts of aforesaid case. Injuries were caused to the respondents by the appellants regarding which medical examination was also conducted and injuries were found on their persons. Allegation of insult and abuse relating to the caste of respondents was also made. On the basis of material collected during investigation charge sheet was filed by the Investigating Officer which was well considered by the learned Special Judge S.C./S.T. Act while passing the order of cognizance on 28.02.2023. There appears no any illegality or impropriety in the order passed by learned court but this appeal being devoid of merit, is liable to be dismissed.

Accordingly, the present appeal is ***dismissed***.

However, it is directed that in case, the appellants appear and move bail application before the court concerned within a period of 30 days from today, it will be heard and decided expeditiously as far as possible in the light of case decided by Hon'ble the Supreme Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation and another LL 2022 SC 577 decided on 11.07.2022.***

Order Date :- 2.12.2023

A. Singh