

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8813 of 2023

Appellant :- Prince Alias Prince Dhar Dubey And 4 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Maya Pati Pandey

Counsel for Respondent :- G.A.

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

Learned counsel for the appellants is present. No one has put in appearance for the opp. party no. 2 despite of sufficient service.

This is an appeal against the order dated 10.7.2023 passed by Additional Sessions Judge/ Special Judge SC/ST Act, Sidharthnagar in Special Criminal Complaint No. 94 of 2021, Sohan Vs. Prince and others. By the impugned order the appellants have been summoned by the trial court to face trial under sections 323, 504, 506 I.P.C. and Section 3(1) (d) of SC/ST Act.

As per the facts of the case, an application under section 156(3) Cr.P.C. was moved by the opp. party no. 2 against the appellants on 1.12.2020 with the version that opp. party no. 2 is a person belonging to S.C. community. The appellants belong to general class. The house of the appellants is in front of the house of the opp. party no. 2 . Towards west, north and south of the house of the appellants, there is a pathway on which in the year 2018 there was a proposal of laying khadanja on the way but because of enmity, the appellants did not permit Gram Pradhan concerned to lay khadanja on this way. A civil suit is also pending between the parties. On 21.11.2020 when the opp. party no. 2 was cleaning this way, all the appellants came there equipped with batons and sticks at about 9.00 a.m. and hurled caste based words. They also hurled abuses against opp. party no. 2. When they were resisted, with intention of causing death of opp. party no. 2 they chased the opp. party no. 2 giving threat of life and thrashed him in his house. As the opp. party no. 2 did not go to do the labourer work at the house of the appellants, so the appellants developed enmity against him and the incident took place. Video recording of the incident was also made. The opp. party no. 2 is very much scared of the appellants that any misfortune may happen with him. When his report was not lodged in the police station he moved applications to Superintendent of police, Deputy Inspector of Police concerned,

SC/ST Commission and the Chief Minister of U.P. through registered post but no action has been taken in this regard.

The application of the opp. party no. 2 was treated as complaint and after recording the statements of complainant under section 200 Cr.P.C. and his witnesses under section 202 Cr.P.C. the trial court passed the impugned order summoning the appellants to face trial under the aforesaid sections.

It is argued by the learned counsel for the appellants that as per the complaint the incident is dated 21.11.2020 while as per medical report dated 24.11.2020 appended at page 41 of the paper book the doctor has found the injuries about 5 days old and thus, the injuries examined on 24.11.2020 are said to be 5 days old so the date of causing injuries comes back as 19.11.2020. While as per the complaint the date of the incident is 21.11.2020. Thus, the injury report is forged one. As the opp. party no. 2 wants to encroach upon the land of the appellants, they filed a civil suit no. 84 of 2018, Surendra and others Vs. Sohan and others for injunction. This suit is still pending before the trial court. It is submitted that as the opp. party no. 2 wants to encroach the land of the appellants, so as a counterblast to the civil suit no. 84 of 2018, the present complaint has been filed on totally false grounds, hence, the prayer is made accordingly.

Learned A.G.A. submitted that his file has not been received from the office.

From the perusal of the complaint itself, it appears that a civil suit is pending between the parties, however, it is regarding the property in dispute or regarding other property is not proved prima facie. On the basis of enmity between the parties, the incident dated 21.11.2020 is said to have taken place whereby the appellants are said to have hurled caste based words, wild abuses, extended threat of life and thrashed the opp. party no. 2. In support of the version of the complaint, the medical report of the first informant dated 24.11.2020 has been placed before the court. The duration of the injuries which is claimed to be false one is still to be explained by the doctor concerned who had examined the opp. party no. 2. It is true that the civil suit between the parties is pending which was filed more than two years back to the present complaint. Thus the present complaint cannot be said to be a counterblast of that civil suit. Whether the incident as mentioned in the complaint took place or not is to be decided by the trial court after the evidence of the parties. On the basis of the complaint version which is supported by the statements of the first informant

and the witnesses, prima facie a cognizable offence can be said to be made out against the appellants.

The trial court on the basis of statements of the complainant and witnesses and the evidence on record came to the conclusion that prima facie a cognizable offence is made out against the appellants and passed the impugned summoning order against the appellants to face trial under the aforesaid sections. In the opinion of the court, the appeal is devoid of merits and is liable to be dismissed.

The present appeal is dismissed accordingly.

Order Date :- 22.11.2023

Gss