

Court No. - 80

Case :- CRIMINAL APPEAL No. - 9004 of 2023

Appellant :- Ramesh Chandra Yadav And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ravindra Prakash Srivastava

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the appellants as well as learned A.G.A. and perused the material on record.

This present criminal appeal has been filed with a prayer to allow the present criminal appeal and setting aside the impugned summoning order dated 03.11.2022 and also to stay the further proceeding passed by Additional District and Sessions/Special Judge, S.C./S.T. (P.A.) Act, Siddharth Nagar in Complaint case No. 51 of 2021 (Radhey Shyam Vs. Ramesh Chandra Yadav and others) under Section 323/34, 504 I.P.C. and 3(1) (s) S.C./S.T. (P.A.) Act, Police Station Mohana, District Siddharth Nagar pending in the court of Additional District and Sessions/Special Judge, S.C./S.T. (P.A.) Act, Siddharth Nagar and also pray to stay the aforesaid proceedings.

It is submitted by learned counsel for the appellant that in this case the application was moved by the respondent under Section 156(3) Cr.P.C. was treated as complaint by the learned Special Judge S.C./S.T. Act and after recording statements of the complainant and other witnesses under Section 200 and 202 Cr.P.C. summoning order dated 03.11.2022 was passed. It is further submitted that an application under Section 156(3) Cr.P.C. was moved by the respondent against the appellants with similar allegations which was rejected by the learned court concerned by not finding any ground to get the case registered and investigated. This fact was also concealed by the respondent while filing second application. It is also submitted that on previous occasion the wife of the respondent Radhey Shyam filed an application under Section 156(3) Cr.P.C. against other inmates of the appellants on account of village rivalry on the basis of which case was registered in which after investigation final report has been filed by the police. The present complaint was filed with false allegations only to make harassment of the appellants. In this way, the order passed by the learned court concerned cannot be said to be lawful and appropriate and passed on the facts of the case but being illegal is likely to be set aside.

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case there is no bar for filing second application regarding the same incident. The

previous application filed under Section 156(3) Cr.P.C. was rejected by the learned court only for getting the case registered and investigated and it was not treated as complaint. Therefore option for filing of complaint was always open to the respondents. Again he also contended that incident is said to have taken place on 13.05.2021 at about 9 P.M. when there was a Dwarpuja at the occasion of marriage ceremony of daughter of Dhanpat. The appellants went there and abused with words relating to his caste, humiliated him and also caused injuries regarding which the complainant was medically examined on the same day at 5 A.M. in which four injuries were found on his person and medical examination was done at P.H.C. which can also not be said to be manipulated and forged at this stage. The statements of the complainant and other witnesses were recorded under Section 200 and 202 Cr.P.C. in which they supported the allegation in complaint. At this stage the veracity of statements cannot be decided but it is possible only during trial. The learned court concerned passed the order in question after considering all these facts and material on record.

Considering the facts and circumstances of the case, submissions made by learned counsel for the appellant as well as learned A.G.A. for the State, the allegation made in complaint, statement of complaint under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C. and the order passed by learned Special Judge on 30.11.2022 and other material on record there appears no any illegality or impropriety in the order on the basis of which it can be said that this was passed illegally or beyond the material on record. As a result, it appears that this order has been passed by the learned Special Judge after applying its judicial mind which cannot be said to be illegal but this appeal being devoid of merit is liable to be dismissed.

Hence, this appeal is ***dismissed***.

However, if appellants file discharge application before the learned trial court it is to be considered on the basis of material on record as per law.

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

Order Date :- 2.12.2023

Suraj Srivastav