

**Court No. - 80**

**Case :-** CRIMINAL APPEAL No. - 8161 of 2022

**Appellant :-** Shravan Kumar

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Appellant :-** Santosh Dwivedi

**Counsel for Respondent :-** G.A.

**Hon'ble Subhash Chandra Sharma,J.**

Notice has been served on the respondent but none appeared.

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

This criminal appeal has been filed by the appellant with prayer to set aside the summoning order dated 22.8.2022 passed by Special court Additional court (S.C./S.T.) Act, Varanasi in Complaint Case No. 06 of 2020 under Sections 147, 323, 504, 506, 452, 354-B IPC and Section 3(1)(X) S.C./S.T. Act, Police Station Cholapur, District Varanasi, pending before Special court Additional court (S.C./S.T.) Act.

Facts in brief are that an application under Section 156(3) Cr.P.C. was moved by the appellant Shravan Kumar before the learned court Special Judge S.C./S.T. Act with allegation that on 5.8.2020 at about 9 a.m. at *Mari Mata Temple*, there was water logging regarding which the appellant and his inmates were making request to the respondents to clean the drainage but they assaulted the appellant and his inmates with abuse relating to his caste and also unclothed a lady. Injuries were also caused on the person of Dharmendra and Pramila Gond. The application under Section 156(3) Cr.P.C. was treated as complaint by learned court in pursuance to which the statement of the complainant Shravan Kumar was recorded under Section 200 Cr.P.C. and statement of other witnesses namely Pramila and Dharmendra were also recorded under Section 202 Cr.P.C. before the learned court concerned. The medical report regarding Dharmendra and Pramila was also filed with the application before the learned court showing injuries on their persons, thereafter order in question was passed by learned Special Judge while dismissing the complaint under Section 203 Cr.P.C. Being aggrieved with the order, present appeal has been preferred before this Court.

It is submitted by learned counsel for the appellant that an application under Section 156(3) Cr.P.C. was filed by the appellant which was treated as complaint and statement of Shravan Kumar, complainant was recorded under Section 200 Cr.P.C. in which he supported the allegation as made in the application. During the course of incident, two persons sustained injuries out of which one was lady namely Pramila and other was Dharmendra Kumar. They were medically examined at C.H.C. on 6.8.2020 where injuries were found on their persons caused by hard and blunt object and duration was about 24 hours which supported the statement as made by the complainant and other injured witnesses under Section 202 Cr.P.C. While passing the order learned court did not consider the allegation as made in the complaint and statements made by the complainant and injured witnesses under Sections 200/202 Cr.P.C. Medico legal examination of injuries found on the person of the injured witnesses was also not considered and no any finding was recorded in this regard while passing the order but dismissed the application on the ground that priest of temple did not made any complaint regarding water logging, therefore, the statement of the complainant and other witnesses were not reliable. Likewise, no prima facie case was found to be made out to summon the accused persons. This finding recorded by the learned Special Judge S.C./S.T. Act cannot be said to be based on material on record but is only based on surmises. There is no any requirement of complaint on the part of Pujari of the temple where water logging was said to have been taken place relating to which quarrel between both of parties. In this way, order passed by the learned court cannot be said to be lawful and appropriate but illegal and is likely to be set aside and appeal is allowed.

Learned AGA opposed the prayer but could not dispute the fact of injuries found on the person of Dharmendra and Pramila during medico legal examination and those were caused about 24 hours prior in the opinion of doctor.

Considering the facts and circumstances of the case, submissions made by learned counsel for the parties and perusal of record along with order passed by learned Special Judge, it appears that there is allegation of water logging near temple regarding which conversation was being made by the complainant and his inmates with the respondent, those belong to upper caste. In the course of altercation, there is allegation of assault on the complainant, Dharmendra and Pramila Gond in which they sustained injuries and they were examined by the doctor in which injuries were also found on their persons caused by hard and blunt object and

duration was about 24 hours. Learned court concerned has not recorded any finding regarding injuries found on the person of injured but dismissed the complaint under Section 203 Cr.P.C. only on the ground that priest of the temple had not made any complaint regarding water logging near temple as a result the statements of the complainant and other injured witnesses were not reliable. This finding cannot be said to be correct and based on material on record. On this ground complaint cannot be rejected.

In view of the above order passed by the learned Special Judge S.C./S.T. Act cannot be said to be lawful and based on material on record as a result it is set aside and learned court is hereby directed to pass the order afresh on the basis of material on record in accordance with law.

Accordingly, this criminal appeal is ***allowed***.

**Order Date :- 1.12.2023**

A. Singh