

Court No. - 80

Case :- CRIMINAL APPEAL No. - 10345 of 2022

Appellant :- Harbansh And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- P.K. Singh, Kuldeep Singh

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Notice has been served on the respondent no. 2, but none appeared on her behalf.

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 set-aside the judgment and order dated 25.09.2019 passed by learned Special Judge (S.C./S.T.) Act, Chitrakoot, by which appellants have been summoned in Complaint Case No. 79 of 2019 (Hiramani Versus Harvansh and others) under Sections 452, 376Gha, 506 I.P.C. and 3(2)5 of S.C./S.T. (P.A.) Act, 1989, pending in the court of Special Judge, S.C./S.T. Act, Chitrakoot.

It is submitted by learned counsel for the appellants that in this case an application under Section 156(3) Cr.P.C. was filed by the complainant which was treated as complaint and statements of the complainant under Section 200 Cr.P.C. and other witnesses under Section 202 Cr.P.C. were recorded on the basis of which, learned court concerned summoned the appellants under Section 452, 376Gha, 506 I.P.C. and 3(2)5 S.C./S.T. Act. It is further submitted that the statement made by the complainant is totally false and there is nothing on record to corroborate the allegation. There is no any medical report to corroborate the allegation of rape. He also submits that there is police report in which it has been mentioned that no any such incident took place, but it was also not considered by the learned court concerned while passing the order in question. Therefore, the order passed by learned court being illegal is liable to be set-aside and the appeal be allowed.

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case there is an allegation against the appellants and P.W. 1 has supported it in his statement during examination under

Section 200/202 Cr.P.C. before the learned court. At this stage veracity of the statement cannot be tested, it is possible during trial.

Considering the facts and circumstances of the case, submission made by learned counsel for the appellants as well as learned A.G.A., perusal of record and the order passed by the learned court concerned dated 25.09.2019, there appears no any illegality or impropriety in the order, but it being devoid of merit is liable to be dismissed.

Accordingly, the present appeal is dismissed.

However, the appellants are directed to appear before the court concerned and move an application for discharge within a period of 30 days from today, which shall be heard and disposed of on the basis of material on record in accordance with law within a period of 60 days thereafter. In the meantime, no coercive action shall be taken against the appellants.

It is made clear that in case the appellants fail to move an application within the aforesaid period, the protection granted by this order will not be available to them.

Order Date :- 8.12.2023

Sunil Kr. Gupta