

Neutral Citation No. - 2023:AHC-LKO:76684

Court No. - 11

Case :- APPLICATION U/S 482 No. - 6188 of 2013

Applicant :- Sant Prakash And Ors.

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- Vivek Tripathi

**Counsel for Opposite Party :- Govt. Advocate, Onkar Singh
Kushwaha**

Hon'ble Saurabh Lavania, J.

Case called out. No one appeared on behalf of opposite party No.2 to oppose the present application under Section 482 Cr.P.C. despite the fact that name of counsel for the opposite party No.2 is shown in the cause list.

Further, present case is listed under the heading ***"These cases shall not be adjourned"***.

In view of aforesaid background of the case, this Court proceeded to decide the case on merits.

Present application has been filed impeaching the summoning order dated 16.06.2022 passed by the Judicial Magistrate, 1st, Court No.17, Raebareli (in short "trial court") in Complaint Case No.60 of 2010 (Indra Pal Pasi vs. Sant Prakash & Others) under Sections 436, 427, 504, 506(2) IPC & Section 3(1)(10) of SC/ST Act, Police Station-Deeh, District-Raebareli and also the order dated 29.04.2013 passed by the Additional District and Sessions Judge, X-Cader-1, Raebareli in Criminal Revision No. 105 of 2012 (Sant Prakash and Others vs. Indra Pal and Another). The order dated 16.06.2012 being relevant on reproduction reads as under:-

"पत्रावली वास्ते तलबी आदेशार्थ नियत है। तलबी के बिन्दु पर परिवादी के विद्वान अधिवक्ता को सुना तथा पत्रावली का सम्यक परिशीलन किया।

परिवादी की ओर से स्वयं को धारा 200 दं०प्र०सं० एवं धारा 202 दं०प्र०सं० के तहत तथा पी०डब्लू० 1 के रूप में ननकऊ व पी०डब्लू० 2 के रूप में देशराज को परीक्षित कराया गया है। परिवादी शिवप्रसाद का बयान अन्तर्गत धारा 200 दं०प्र०सं० एवं साक्षीगण पी०डब्लू० 1 व पी०डब्लू० 2 का बयान अन्तर्गत धारा 202 दं०प्र०सं० के तहत अंकित किया गया है, जिन्होंने प्रार्थना पत्र अन्तर्गत धारा 156 (3) दं०प्र०सं० में वर्णित तथ्यों का समर्थन किया है। परिवादी अनुसूचित जाति का है। परिवादी के मूल प्रार्थना पत्र अन्तर्गत धारा 156 (3) दं०प्र०सं० तथा शेष गवाहान द्वारा दिये गये साक्ष्य में अभियुक्तगण द्वारा जाति सूचक शब्द " साले पसिया" का प्रयोग कर परिवादी के घर में आग लगाने, गाली गलौज करने व जान से मारने की धमकी देना कहा गया है। इस प्रकार उपलब्ध साक्ष्य के आधार पर परिवादपत्र में वर्णित तथ्यों की प्रथम दृष्टया पुष्टि होती है।

अतः पत्रावली पर उपलब्ध साक्ष्य व पूर्ण विवेचन से अभियुक्तगण अभियुक्तगण संतप्रकाश, भानूप्रकाश, विजय प्रकाश व अजय प्रकाश के विरुद्ध प्रथम दृष्टया अपराध अन्तर्गत धारा- 436, 427, 504 एवं धारा 3 (1)(10) एस०सी०एस०टी० एक्ट बनता पाया जाता है। उन्हें तलब किये जाने का पर्याप्त आधार है।

आदेश

अभियुक्तगण उपरोक्त को अन्तर्गत धारा 436, 427, 504 , 506 (2) एवं धारा 3 (1)(10) एस०सी०एस०टी० एक्ट में तलब किया जाता है। परिवादी सूची गवाहान दाखिल करे। अभियुक्तगण के विरुद्ध सम्मन जारी हों परिवादी पैरवी अन्दर समाह करे। पत्रावली वास्ते हाजिरी मुल्जिमान दिनांक 19.7.2012 को पेश हो। "

Challenging the aforesaid orders, learned counsel for the applicants says that the trial Court, after considering the material available on record including the statements recorded under Sections 200 and 202 of Cr.P.C. observed that the offence under Sections 436, 427, 504 IPC & Section 3(1)(10) of SC/ST Act, is made out, however, the applicants have been summoned under Sections 436, 427, 504, 506(2) IPC & Section 3(1)(10) of SC/ST Act. As such, the trial Court committed error in summoning the applicants under Section 506(2) IPC.

It is further stated that the revisional court while passing the order dated 29.04.2013, whereby rejected the revision filed by the applicants, failed to consider the fact that the trial

Court in the order of summoning dated 16.06.2012 observed that the offence under Sections 436, 427, 504 IPC & Section 3(1)(10) of SC/ST Act, is made out, however, summoned the applicants under Sections 436, 427, 504, 506(2) IPC & Section 3(1)(10) of SC/ST Act, as such, the order of the revisional Court is also liable to be interfered with.

It is further submitted that before the trial court informant/complainant Inderpal has not indicated any facts based upon the which Section 506(2) IPC can be attracted. To attract Section 506(2) IPC other witnesses have also not indicated anything in their statements recorded under Section 202 of Cr.P.C. Thus, interference of this Court is required. Prayer is to allow the application.

Learned AGA opposed the present application. He says that the applicants are not entitled to any protection from this Court for the reasons to the effect that the order dated 16.06.2012 was assailed before the revisional court and the revisional court, after considering the entire aspects of the case, affirmed the order of the trial court dated 16.06.2012 vide its order dated 29.04.2013. Thus, the concurrent findings are against the applicants and at this stage of summoning, no interference is required. However, he could not dispute that after taking note of facts of the case, trial court specifically observed in its order dated 16.06.2012 that the offence under Sections 436, 427, 504 IPC & Section 3(1)(10) of SC/ST Act is made out and despite this, applicants were summoned in a additional Section 506(2) IPC and also that said aspect of the case was not taken note of by the revisional court.

Considered the submissions advanced by the learned counsel for the parties and perused the record.

From the record including the order impugned dated 16.06.2012, it is apparent that the trial Court specifically observed that offence under Sections 436, 427, 504 IPC & Section 3(1)(10) of SC/ST Act is made out and despite this, summoned the applicants in a additional Section 506(2) IPC.

Thus, this Court finds that the trial Court committed error in summoning the applicants. Further, revisional court has also not taken note of this aspect of the case while dismissing the criminal revision filed by the applicants vide order dated 29.04.2013.

For the reasons aforesaid, this Court is of the view that interference in the matter is required.

Accordingly, the summoning order dated 16.06.2012 as also the order of revisional court dated 29.04.2013 are hereby set aside and the matter is remanded back to the revisional court to pass fresh order, as per law, after considering the entire material available on record, expeditiously.

With the aforesaid observations, the application is **allowed.**

Order Date :- 22.11.2023

Vinay/-