

Neutral Citation No. - 2023:AHC-LKO:77687

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1044 of 2023

Appellant :- Nanga

Respondent :- State Of U.P. Thru. Addl. Chief Secy. / Prin. Secy.
Home, Lucknow

Counsel for Appellant :- Ganesh Nath Mishra

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

1. The case is being taken up in the revised call.
2. None has appeared on behalf of the opposite party Nos. 2 to 8.
3. Heard Sri Yash Raj Agarwal, Advocate holding brief of Sri Ganesh Nath Mishra, learned counsel for the appellant and Sri Bhasker Mal, learned A.G.A. for the State.
4. This Criminal Appeal under Section 14-A (1) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act has been preferred against the impugned order dated 30.11.2022 passed by the Court of Special Judge, SC/ST Act, Gonda in Criminal Misc. Case No. 145/2022 (Nanga Vs. Arjun Pandey and others), Police Station-Dhanepur, District Gonda, whereby application under Section 156 (3) Cr.P.C. moved by the appellant has been rejected.
5. Learned counsel for the appellant submits that the application filed under Section 156 (3) Cr.P.C. before the Magistrate was rejected without considering the material available on record and the correct fact of the case.
6. Learned counsel for the appellant further submits that the opposite parties Nos. 2 to 8 on the back of the appellant, executed forged sale deed of 1100 square feet in place of 500 square feet on the basis of forged and manipulated documents. On 1.10.2021 when the accused persons went to take the possession of the land in question, then the appellant objected to them and they abused him with caste

languages. The wife of appellant against the forged registered sale deed executed by the respondent Nos. 2 to 8 has filed a suit for cancellation before the Court of Civil Judge (Junior Division), Gonda on 16.11.2021, which is still pending. This fact has been stated in paragraph no.4 to the affidavit filed in support of the appeal. The appellant wife and the appellant have already moved an application before the police concerned, but the F.I.R. was not registered.

7. Learned counsel for the appellant further submits that due to this enmity the opposite parties Nos. 2 to 8 on 07.11.2021 in the morning 7.00 O'clock entered into the house of the appellant and started abusing them with filthy languages and tried to beat with lathi-danda. The appellant any how saved himself and entered into the room, the opposite parties Nos. 2 to 8 entered into room of appellant and destroyed the household articles and brutally beaten the appellant, when the wife of the appellant tried to save him, then the opposite party Nos. 2 to 8 misbehaved with her and torn her cloth and also beaten her. The opposite party Nos. 2 to 8 also beaten to the son and grandson of appellant who were trying to save him. After making alarm, the opposite party Nos. 2 to 8 ran away.

8. Learned counsel for the appellant further submits that the appellant informed the local police regarding the incident, but no F.I.R. was lodged, thereafter having no alternative he moved an application under Section 156 (3) Cr.P.C. before the Court of Special Judge, SC/ST Act, Gonda on 14.03.2022. Learned court below called for report from the concerned Police Station and the Sub-Inspector, Police Station-Dhanepur, District Gonda submitted report before the court concerned on 30.03.2022. He further submits that the court below vide order dated 30.11.2022 without considering the correct fact dismissed the application of the appellant moved u/s 156(3) Cr.P.C., thus the present appeal has been filed.

9. Sri Bhasker Mal, learned A.G.A. submits that from perusal of the application filed by the appellant and the impugned order dated

30.11.2022, the case is that the opposite parties entered into the house of the appellant and abused him with filthy languages as well as beaten him and his wife and son. He further submits that the provision of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act is not attracted in this case as the entire incident took place inside the house of the appellant which does not come in the purview of public view and public place. He further submits that the appellant is trying to take financial benefit from the State Exchequer by moving application under Section 156 (3) for lodging of the F.I.R., whereas the dispute is purely civil in nature. In support of his argument, learned A.G.A. has relied upon a judgment rendered by the Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710** and placed reliance upon para 13 and 18 of the aforesaid judgment, which are reproduced hereunder:-

"13. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure

established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.

18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

10. Learned A.G.A. for the State further submits that it is an admitted fact that against the sale deed, as alleged by the appellant being forged, in respect of the plot which was registered in the name of the wife of the appellant, a suit for cancellation of the sale deed has already been filed, which is also pending before the court of Civil Judge (Junior Division), Gonda, thus the matter is already sub-judice before the competent court for its adjudication and the matter pertains to civil dispute and the appellant has tried to give colour to a civil dispute into criminal prosecution, even though in respect of the alleged "maar-peet", the appellant has not filed any medical examination paper before the court concerned while moving application under Section 156 (3) Cr.P.C., even though the police in its report has also not confirmed the alleged incident, as alleged by the appellant, thus the present appeal is nothing but an abuse of process of law. He further submits that the appellant fails to demonstrate his case, which does not attract the provisions of SC/ST Act as well as the Sections of I.P.C. The court below has rightly rejected the application of the appellant on the ground that the matter is purely of civil nature

and the appellant fails to establish that any physical torture has been done with him, thus the appeal may be rejected.

11. After considering the arguments as advanced by learned counsel for the parties and after perusal of the impugned order and the application filed by the appellant under Section 156 (3) Cr.P.C., this court finds that as per the averment made by the appellant in paragraph No. 4 of the affidavit filed in support of the appeal, it has been admitted that against the alleged sale deed, which was executed by the opposite party Nos. 2 to 8, the wife of the appellant has already filed a suit for cancellation of the sale deed before the court of Civil Judge (Junior Division), Gonda on 16.11.2021, thus whatever relief she will get, she will get by the competent court, even though she has not got any injunction order, thus only to give gravity to the offence, the appellant tried to implicate the opposite parties, by moving an application under Section 156 (3) Cr.P.C.. There appears force in the argument of learned A.G.A. that the appellant has tried to give colour to a civil dispute into criminal prosecution and also with the intention to get some financial aid by the State Exchequer, if the F.I.R. is lodged, thus it is mischief played by the appellant by moving application under Section 156 (3) Cr.P.C. and also with the intention to harass the opposite parties, who belong to general category caste and the appellant belongs to SC/ST categories. The physical torture is also not supported by any medical evidence, as the appellant has not filed any medical paper issued by the Government Hospital, whatever the paper, the appellant has filed is of a private hospital, which cannot be accepted as an evidence and the entire incident took place inside the house, as admitted by the appellant, thus in view of judgement passed by the Apex Court in **Hitesh Verma (supra)** the provision of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act is not attracted in this case. The appellant has tried to take financial benefit by the State Exchequer by moving application under Section 156 (3) for lodging of the F.I.R., whereas the dispute is purely civil in

nature. The finding given by the court below is justified and convincing. The court below has rightly rejected the application of the appellant filed under Section 156 (3) Cr.P.C. by a reasoned and convincing order, thus, I do not find any illegality and infirmity in the impugned order.

12. The appeal lacks merit and is accordingly **dismissed**.

Order Date :- 21.11.2023

Arvind