

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1825 of 2023

Appellant :- Sant Pal

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lucknow And 3 Others

Counsel for Appellant :- Mohammad Shahzad Ahmad, Shamshad Ahmad

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard learned counsel for the appellant and learned A.G.A. for the State as well as perused the entire record.
2. This Criminal Appeal under Section 14-A (1) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been preferred against the cognizance and consequential summoning order dated 29.3.2023 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in S.S.T. No. 628 of 2023, Case Crime No. 0799 of 2022, State v. Sant Pal, whereby the court below has summoned the appellant to face the trial under Sections 504 and 506 I.P.C., read with Section 3(1)Da, and 3(1)Dha of S.C./S.T. Act, 1989, Police Station Kotwali Nagar, District Raebareli.
3. Learned A.G.A. has already filed counter affidavit and in reply thereto learned counsel for the appellant has filed rejoinder-affidavit. These affidavits are taken on record.
4. This Court vide order dated 7.6.2023 had issued notice to opposite party No. 2. As per the office-report dated 6.7.2023, the notice was personally served upon the opposite party No. 2, but no counter affidavit has been filed on his behalf. Thereafter, the matter was listed on 6.10.2023.
5. Today also, when the case is taken up in the revised list, no counter affidavit has been filed by the opposite party No. 2 nor any counsel is present to press his case, thus, it appears that the opposite party No. 2 is not interested in contesting the case.
6. Learned counsel for the appellant submits that the appellant is a Class-II Gazetted Officer and is in service, hence, the matter be heard and decided finally. He further submits that the appellant is posted as Assistant Labour Commissioner in District Raibareli and is a law-abiding citizen. The opposite party No. 2 is working as Peon-cum-Chowkidar in his office. On 3.11.2022, he misbehaved with the appellant and also disobeyed the order given by the appellant for some official

work. The opposite party No. 2 reacted very harshly and abused and interfered in the administration of working of a Government Officer.

7. Being aggrieved, the appellant lodged a first information report on 04.11.2022 in respect of the incident dated 3.11.2022 against the opposite party No. 2 bearing F.I.R. No. 0794 of 2022 under Sections 504 and 506, I.P.C. Chargesheet in the matter has been submitted against the opposite party No. 2 and a departmental inquiry was also initiated against him regarding dereliction of duty and misbehaviour with the superior officer and, consequently, he was suspended vide order dated 9.11.2022. A copy of the said order has been filed as Annexure No. 6 to the affidavit filed in support of the bail-application.

8. Learned counsel for the appellant further submits that the opposite party No. 2 is a notorious person and is also a Union Leader. He always use to interfere in the day-to-day working of the appellant, being a Government Officer, and use to threaten him with dire consequences for not favouring him. In a counterblast of the first information report lodged by the appellant in respect of the incident dated 3.11.2022, the opposite party No. 2 also lodged the first information report in respect of the same incident dated 3.11.2022. The F.I.R. lodged by the opposite party No. 2 is totally false, fabricated and manufactured and this F.I.R. was lodged on 6.11.2022, i.e. after much delay and after lodging of the F.I.R. by the present appellant, and in the said F.I.R. allegation was levelled that the appellant has abused him and threatened also.

9. Learned counsel for the appellant submits that as stated by the opposite party No. 2 himself in the F.I.R., on mobile phone the appellant had threatened and abused him with caste languages. It was further stated in the F.I.R. that after offering tea to his guest in the tea-stall outside the office, when he returned back to the office, the appellant again threatened him with dire consequences and said "Badtameez".

10. Learned counsel for the appellant further submits that from the statements of the opposite party No.2 in the first information report, the ingredients of S.C./S.T. (P.A.) Act, 1989 are not attracted in the case of the appellant. Even the sections 504 and 506 of the I.P.C. are also not attracted in the case of the present appellant. These sections of I.P.C. have been inserted only to give colour to the gravity of the offence.

11. Learned counsel also submits that as per the version of the first information report, the first abuse hurled by the appellant was "on the mobile phone" and the word "Badtameez" was said

"in the chamber", which is not a public place nor there is any public view, thus, the ingredients of Section 3(1)(r & s) of the S.C./S.T. (P.A.) Act, 1989 are not attracted at all. In support of his arguments, learned counsel for the appellant has placed reliance on the Supreme Court judgment in the case of *Hitesh Verma v. State of Uttarakhand*, 2020 (10) SCC 710 (paragraph Nos. 11 and 18). He has also placed reliance on the latest judgment passed by the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya v. State of U.P., 2023 SCC Online SC 668 (Paragraph No. 18 and 19)**. He submits that the said humiliation was not at public place nor in public view, thus, no case is made out under the provisions of the S.C./S.T. (P.A.) Act, 1989. Even the ingredients of Section 504 and 506, I.P.C. are not there in the F.I.R., thus, the proceedings initiated against the appellant be quashed in the interest of justice.

12. Learned counsel further argued that prior sanction under Section 197, Cr.P.C., which is mandatory, has also not been obtained from the employer of the appellant before initiating criminal proceeding against him, as he is the Government Servant, which also vitiates the entire proceedings initiated against the appellant. In support of this submission he has placed judgment of the Supreme Court in the case of **Balwant Singh v. State of Punjab, (1995) 3 SCC 214**, and also in the case of **Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1**, and submits that if any criminal proceeding is initiated against a government employee, then a prior sanction under Section 197, Cr.P.C. is mandatory. It was also argued that from perusal of the the first information report , chargesheet as well as the statements of the witnesses ingredient of Section 504, 506, I.P.C. and Section 3(1)(r and s), S.C./S.T. (P.A.) Act are not attracted in the case of the appellant.

13. Learned counsel further submits that the entire story as narrated by the opposite party No. 2 in his first information report, is nothing, but an abuse of the process of law and the learned Magistrate has taken cognizance and summoned the appellant in a cursory manner, without considering the evidence on record and even chargesheet was filed by the Investigating Officer in a mechanical manner. He has not even considered the provisions of the S.C./S.T. (P.A.) Act, 1989 and also not taken the statement of the appellant while submitting his chargesheet, thus, there is a flaw in the chargesheet and that also is liable to be quashed.

14. Several other submissions in order to demonstrate the falsity of the allegations made against the appellant have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the

accused have also been touched upon at length. It has also been pointed out that the accused is not having any criminal history to his credit.

15. Sri Ashok Kumar Singh, learned A.G.A. submits that prima facie reading of the first information report, case is made out against the appellant, but he did not dispute the fact that as per the version of the first information report the first caste-abuse was done by the appellant on mobile phone and thereafter in the office, so he also submits that it does not appear to be a public place or public view, but he submits that as the cognizance of the chargesheet has been taken by the Court below, thus, case is made out against the appellant and no interference is required. The appellant has rightly been summoned to face the trial, and submits that the appeal deserves to be dismissed.

16. After considering the arguments as advanced by the learned counsel for the parties and after perusal of the record and the pleadings exchanged between the parties, this Court finds force in the submissions of the learned counsel for the appellant that the appellant is a Class-II Gazetted Officer and is in service, hence, the matter be heard and decided finally.

17. After hearing learned counsel for the parties and perusal of the record, it comes out that the first information report lodged by the opposite party No. 2 is the counterblast to the F.I.R. lodged by the appellant, who is a gazetted officer and under whom the opposite party No.2 is posted and working, in respect of the incident dated 3.11.2022. The FIR was lodged by opposite party No.2 after much delay as the incident is said to have occurred on 03.11.2022 and the FIR was lodged on 06.11.2022. There is no explanation about the delay in lodging the FIR.

18. As regard the attraction of the provisions of SC/ST Act, from the record it clearly emanates that the words were not uttered by the appellant in a public gaze/public place, which can be terms as humiliation. The said words, it assumed to have been uttered by the appellant are true, then same were uttered in the office chamber or at mobile. The word "Badtameez" in my opinion does not fall under the provisions of SC/ST Act. Moreover, the learned Government Advocate appearing for the State also does not dispute the aforesaid facts.

19. Further, this Court finds that learned Trial Court also erred in not considering the fact that mandatory requirement of prior sanction under Section 197, Cr.P.C. has also not been obtained from the employer of the appellant before initiating criminal proceeding against the appellant and as such it vitiate the entire

proceedings including the summoning order.

20. Considering the facts in its entirety and non-observance of mandatory requirement of prior sanction before institution of criminal proceedings and the law laid down by the Hon'ble Apex Court in the judgments, referred above, the entire criminal proceedings initiated against the appellant are bad in law and cannot be legally sustained.

21. Accordingly, the appeal is **allowed**. Order dated 29.3.2023 passed by learned Special Judge, S.C./S.T. Act, Raebareli, in S.S.T. No. 628 of 2023, taking cognizance of the chargesheet submitted in Case Crime No. 0799 of 2022, under Sections 504 and 506 I.P.C. and Sections 3(1)Da, and 3(1)Dha of S.C./S.T. Act, 1989, Police Station Kotwali Nagar, District Raebareli, and summoning the appellant to face trial in the aforesaid sections, and the entire proceeding in the said S.S.T., are hereby **quashed**.

22. Let a copy of this order be sent to the court concerned.

(Shamim Ahmed, J.)

Order Date :- 29.11.2023
A.Nigam