

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3037 of 2023

Appellant :- Hari Om Tiwari @ Ram Ji Tiwari And 3 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko And Another

Counsel for Appellant :- Ram Milan Yadav

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the appellants, learned AGA for the State and perused the material on record.

2. Present criminal appeal under section 14-A(1) of the Scheduled Caste and Scheduled Tribes(Prevention of Atrocities) Act, 1989 has been preferred on behalf of the appellant challenging the summoning order dated 10.08.2023 passed by Additional Sessions Judge, SC/ST (P.A.) Act, Unnao, in Complaint No.204 of 2021 (Saroj Vs. Ram Ji Tiwari & others), under sections 323, 504, 506, IPC and section 3(1) (da, Dha) of SC/ST(P.A.) Act, against the Madhusoodan Tiwari @ Maksoodan Tiwari, Tubba @ Govinda Sharan & Vishwanath & under sections 324, 504, 506, IPC and section 3(1)(da, Dha) of SC/ST(P.A.) Act, against the Hari Om Tiwari @ Ram Ji Tiwari, Police Station Gangaghat, District Unnao.

3. It is submitted by learned counsel for the appellants that the complainant did not move any application in the police station concerned and directly filed the complaint before the court concerned on the basis of false and concocted story. There is delay of seven days in filing the complaint, which has not been explained by the complainant. There is no independent witness of the alleged incident and allegations are general in nature. Therefore, it is prayed to set-aside the impugned summoning order dated 10.08.2023 passed by the court below.

4. Per contra, learned AGA for the State opposed the aforesaid contention of learned counsel for the appellants and submitted that there is no illegality or irregularity in the impugned summoning order and same is based on evidence on record, statements under sections 200 & 202 Cr.P.C. and also on the basis of medical report of the injured, hence the appeal is liable to be dismissed.

5. I have heard the rival submissions of learned counsel for parties and perused the record.

6. From the perusal of record it transpires that complainant approached the police station concerned for lodging the FIR, however, he was directed for medical examination before lodging the FIR. He was medically examined on 23.03.2021 and medical report is on record as annexure no.3 to the appeal. He moved an application to the SSP, Unnao on 26.03.2021 and send a letter to the D.G.P., Lucknow. When no FIR was lodged then he moved complaint before the court. The court after taking cognizance of the complaint and recording the evidence of complainant under section 200 Cr.P.C. and evidence of witnesses under section 202 Cr.P.C., summoned the accused appellants on the basis of the statements under section 200 and 202 Cr.P.C. and on the basis of medical report.

7. The delay is well explained.

8. Appellants could not show any prima-facie illegality or irregularity in the impugned order. There is no miscarriage of justice. Hence the appeal is liable to be dismissed and the appellants is not entitled to get the relief as prayed.

9. According, the present appeal is dismissed.

10. However, it is directed that if appellants appears/surrender before the trial court concerned within fifteen days from today and apply for bail then, their bail application shall be decided by the court below on the basis of laid down by the Apex Court in the cases of Satender Kumar Antil Vs. Central Bureau of Investigation, reported in 2021 (10) SCC 773 and Satender Kumar Antil Vs. Central Bureau of Investigation and others MANU/SC/0851/2022.

(Renu Agarwal,J.)

Order Date :- 31.10.2023

VKG