

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3035 of 2023

Appellant :- Nek Mohammad @ Laden

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

Counsel for Appellant :- Dinesh Kumar Shukla

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the appellant, learned AGA for the State and perused the material brought 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 order dated 12.04.2023 passed by Special Judge(SC/ST Act), Bahraich, in Criminal Application No.229 of 2023, CNR No.UPBH010019742023, arising out of Case Crime No.09 of 2023, under sections 279, 452, 323, 504, 506, 427, 376-D, 392, IPC and section 3(1)(2)5 of SC/ST Act, Police Station Baundi, District Bahraich.
3. It is submitted by learned counsel for the appellant that impugned order is illegal and passed without consideration of facts. FIR was not registered under section 376-D, as there is no evidence against the present appellant for the same. The investigating officer has produced the victim for medical examination, but the victim has refused for her medication examination. There is no eye witness of the alleged incident and the appellant has been implicated in the present on account of political pressure. Therefore, it prayed to cancel the impugned warrant under section 82 Cr.P.C. issued by the court below against the appellant.
4. Learned AGA for the State opposed the relief as prayer by counsel for the appellant and submitted that non-bailable warrant was issued against the appellant on 14.03.2023 which remained un-executed as the accused-appellant was not found at

his house and the trial court has considered all the aspects of matter, thereafter, impugned order has been passed, and there is no illegality in the impugned order. He further submitted that impugned order is interlocutory in the nature and appeal is not maintainable against the present interlocutory order order.

5. It transpires from the record that Case Crime No.09 of 2023(State Vs. Gabbar Vs. Kallu Ansari), was registered against the present appellant, under sections 279, 452, 323, 504, 506, 427, 376-D, 392, IPC and section 3(1)(2)5 of SC/ST Act, Police Station Baundi, District Bahraich. The investigating officer raided all possible places where the accused-appellant could be found but the appellant did not cooperated with the investigating officer. Therefore, investigating officer moved an application before the court concerned for issuing non-bailable warrant against appellant on 14.03.2023. After the issuance of non-bailable warrant the police raided the house of appellant but he could not be arrested. Appellate did not surrender before the court concerned nor appear before the investigating officer, therefore, warrant under section 82 Cr.P.C. was issued by the Special Judge, SC/ST Act, Bahraich. In the trial court the appellant did not mentioned any of the circumstances under which the appellant could not appear before investigating officer in relation to the investigation of the case. In the present appeal also nothing has been mentioned as to whey the appellant did not surrender before the court concerned or he did cooperate with the investigation, however, the factum of the case is disputed in the present appeal.

6. The order of issuance of warrant under section 82 Cr.P.C. is interlocutory in nature. Interlocutory order means (Not that, which decides the cause, but which only settles the intervening matters relating to cause), such an order is made pending the

cause and before the final hearing of the matter on merit. It is made to secure some ends and purposed necessary and essential to the progress of case and generally collateral to the issues to be settled by the court in that final judgment. Order, summoning witness, adjoining the case, passing the order of bail, calling for reports, attaching the properties, and such other steps in the aid of pending proceedings shall amount to be interlocutory orders, against which no appeal can be preferred. The order which amount to be interlocutory order has been considered by the Hon'ble Apex Court in the case of "Amina Ahmad Dossa and Others Vs. State of Maharashtra", reported in (2001) 2 SCC 675.

7. In the light of above discussion, the impugned order is interlocutory in the nature and no appeal is maintainable against the impugned order.

8. Moreover, learned counsel for appellant could not dispute the aforesaid facts and has not given any reason as to why the appellant did not appear before investigating officer and not cooperating with the investigation.

9. There is no illegality or irregularity in the impugned order dated 12.04.2023 by which warrant under section 82 Cr.P.C. was issued by the court concerned against the appellant to ensure his presence. Hence the present appeal is liable to be dismissed.

10. Accordingly, the present is dismissed, with the direction to the appellant to appear before the investigating officer within 15 days from today.

(Renu Agarwal,J.)

Order Date :- 31.10.2023/VKG