

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3091 of 2023

Appellant :- Ghansyam Verma

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

Counsel for Appellant :- Dileep Kumar Pathak

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for appellant and learned A.G.A. for the State.

2. Instant criminal appeal under Section 14-A (2) of Scheduled Caste and Scheduled Tribes Act has been preferred against the summoning order dated 14.09.2023 passed by Additional Session Judge/ Special Judge SC/ST (P.A.) Act Gonda in Special Session Trial No. 1287 of 2023 (State Vs. Radhey Shyam Verma and Ors.) Case Crime No. 0118 of 2023, under Section 323, 504 and 506 I.P.C. & under Section 3 (1) (d) (dha) of SC/ST Act, Police Station Itiyathok District- Gonda by means of which the appellant has been summoned to face the trial.

3. It is submitted that Investigating Officer, without making fair investigation and without collecting any evidence, submitted charge sheet against the appellant and on the basis of fictitious and baseless charge sheet, the learned special Judge has taken cognizance. The appellant is totally innocent and he is falsely implicated in the case. It is further submitted that the complainant himself admitted that his father has received serious injury from the paddle of the cycle. It is lastly submitted that impugned order passed by the court below is erroneous, illegal, unjust and that the same has been passed without proper

application of mind and the same deserves to be set aside.

4. Per contra, learned AGA for the State submitted that impugned order passed by the court below is in accordance with law and has been passed with proper application of mind. It is submitted that in case diary of investigation of C.O. it is mentioned that appellant and his brother-Radhey Shyam had assaulted the informant by taking his caste name and also threatened to kill him, hence the present appeal is liable to be dismissed.

5. I heard rival submissions and perused the record.

6. The appellant challenged the order by which the court has taken cognizance of the report submitted under Section 173 Cr.P.C by the Investigating Officer/C.O. Apparently on the basis of investigation, the Investigating Officer found that appellant assaulted the informant and abused him by caste name. At this stage the merits or defence of appellant cannot be taken into consideration.

7. The contents of FIR reveals that the father of the complainant Rama Shankar went to see Kajari Teej fair at Gandhi Chabutara on 30.08.2022 where he received serious injuries from paddle of cycle the father of the complainant had taken medicine from the appellant. The appellant had given injection and some medicine to the complainant's father and some oil for massage which reacted and the legs of the complainant's father started swelling.

8. The facts revealed in the FIR has to be proved during the trial. The appellant can challenged the facts at the stage of framing of charge also. At this stage the merits of the case is not to be taken into consideration. There is no illegality, irregularity or infirmity in the impugned order and the appeal is liable to be dismissed.

9. This appeal is accordingly, **dismissed**.

10. However, the applicant will have an opportunity at the appropriate stage to move an application for discharge before appropriate Court taking therein all the pleas factual and legal which may be available to him/her, in accordance with law. In case, such an application is moved before the learned trial Court, the learned trial Court shall dispose of the same by a speaking and reasoned order, strictly in accordance with law.

(Renu Agarwal, J.)

Order Date :- 6.11.2023

Satish