

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3099 of 2023

Appellant :- Ram Sharan

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And 6 Others

Counsel for Appellant :- Ram Kushal Tiwari,Ravindra Pandey

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard learned counsel for the appellant as well as learned A.G.A. for the State.
2. The present revision has been filed under section 149 of S.C./S.T. Act, against the order dated 28.08.2023, passed by Special Judge, S.C./S.T. Act, Court No.2, Sultanpur, in Criminal Miscellaneous Case No.72 of 2021 (Ram Sharan Vs. Rakesh Kumar Vishwakarma) by which the application filed under section 156(3) CrPC, moved by the appellant, has been rejected.
3. It is submitted that the order dated 28.07.2023 passed by the court below is quite illegal and arbitrary and deserves to be set aside. It is submitted that the appellant was abused in the name of caste by the respondent no.2 to 6 and as such cognizable offence was made out. It is submitted that respondent no.2 to 6 in collusion with the respondent no.7 fraudulently got the signature of appellant on blank papers and committed fraud with the appellant. Hence, it is prayed that the impugned order may be set aside.

4. Per contra, learned A.G.A. for the State opposed the revision on the ground that all the facts are within the knowledge of appellant and no factum is disclosed which requires to be investigated by the investigating officer.

5. It is submitted that respondent no.7 is government official, and no case can be registered against him without seeking the permission, in compliance of the provisions of 197 CrPC.

6. I have heard the submissions and perused the record. As per the application moved under section 156(3) CrPC, the appellant is residing in his village after retirement from Indian Army. It is submitted that accused No.5, namely, Gufrana, wife of Junaid Ahmed, has formed a gang of village goons and wants to grab his property. All of them threatened him to leave the village and continued to torture him in many ways. Accused no.1 to 4 have opened their discharge of drainage water, urine and filth towards the house of the appellant and when the appellant forbade them to do so, they abused him by his caste name and tried to assault him. The appellant moved many applications before the administration and police but no action has been taken against them, therefore, they are acting with high-handedness. It is further submitted that accused no.1 to 4 had germinated a *jamun* tree on the way towards the house of the appellant and they are neither removing the tree, nor they are allowing the appellant to remove that tree. Thereafter, he moved an application before the Sub-Division Magistrate, Baldirai,

Sultanpur. After inquiry, it was found that the jamun tree is situated in between the road and it was suggested in inquiry before to remove that tree but even after the report, the accused did not remove that tree. It is also submitted that the administrative authorities are also backing the accused no.1 to 4.

7. Learned trial court discussed all the facts and reached to the conclusion that the total dispute arose between the parties due to the tree situated on the way. Parties have also entered into compromise in the light of *Gayasuddin vs. State of U.P.*, ACC 2013 (80) (page no.101); *Dilip Kumar Mishra vs. State of U.P.* ACC 2013 (80) (page no.870 sub para 20) and *SC and Karan Singh vs. State of M.P.* 1992 CRLJ (page no.3054). It was held by learned trial court that no investigation is needed. It was further held by the trial court that the application moved under section 156 (3) CrPC is not supported by affidavit, hence, the application moved by the revision is dismissed.

8. During the course of argument, learned counsel for the appellant submitted that respondent no.2 to 6 are bullysomes persons and they are creating hindrance on the way. Police authorities and area lekhpal of village, i.e., respondent no.7 in collusion of each other are not taking any action and no FIR was lodged on the application of the appellant, therefore, he was compelled to move the application under section 156(3) CrPC which was rejected.

9. From the order of learned trial court, it appears that there is dispute with regard to the tree which is situated on the way heading to the house of the appellant and there is nothing disclosed in application moved under section 156 (3) CrPC that any fact is to be inquired or investigated by the investigating officer. More so, the parties have entered into compromise which is on record. The signature on the papers are not denied by the appellant, however, he has stated that he signed on blank papers. The appellant is an educated person and had worked in armed forces, hence, if he had signed the papers, he cannot deny it at this stage. During the police inquiry, no such offence is found. It is also important to mention that the respondent no.7 is lekhpal of village and no permission is sought for his prosecution under the provision of 197 CrPC. Hon'ble Supreme Court has ruled in plethora of judgments that no case can be filed against any gazetted officer without permission.

“197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹ Provided that where

the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression " State Government" occurring therein, the expression " Central Government" were substituted.

10. Hon'ble Supreme Court in case of ***D. Devaraja vs. Owais Sabeer Hussain*** passed in ***Criminal Appeal No. 458 Of 2020*** has held that ***“sanction is required not only for acts done in the discharge of official duty but also required for any act purported to be done in the discharge of official duty and/or act done under colour of or in excess of such duty or authority”***.

11. In ***Devinder Singh vs. State of Punjab through CBI*** passed in ***(2016) 12 SCC 87***, Hon'ble Supreme Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:

“39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. *Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.*

39.2. *Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.*

39.3. Even in facts of a case when public servant has exceeded in his duty, if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CrPC, but such relation to duty should not be pretended or fanciful claim. The offence must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offence was incomplete without proving, the official act, ordinarily the provisions of Section 197 CrPC would apply.”

12. It is apparent from the application moved under Section 156 (3) Cr.P.C that opposite party No. 7 Mahesh Singh is alleged to have obtained the signature of appellant on blank papers but signatures are not denied. This signature are said to have been obtained with regard to the compromise between the parties and no other allegation is levelled against the opposite party No. 7. There is no allegation against the opposite party No. 7 to abuse the appellant with caste name nor any other allegation.

13. So far as the opposite party Nos. 2 to 6 are concerned the only allegation levelled of not removing the Jamun tree from the road is levelled against them along with abuse by

case name. No medical report is on record, no allegation of assault is made, the case is of civil nature. Learned trial court addressed all the points in the impugned judgment. There is nothing on record to show that the case needs any investigation. The applicant appears to create pressure upon the opposite party. Moreover, the application moved under Section 156(3) Cr.P.C is not supported with affidavit, hence, the order passed by the learned trial court does not suffers from any illegality, irregularity or infirmity and the order is in consonance with the provision of law settled by the Apex Court.

14. In view of the above discussions, the appeal is liable to be dismissed and is accordingly dismissed.

(Renu Agarwal,J.)

Order Date :- 6.11.2023

Manoj Kr/Nadeem