

Court No. - 13

Case :- CRIMINAL APPEAL No. - 1640 of 2024

Appellant :- Phool Chandra

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

Counsel for Appellant :- Umesh Pratap Singh, Adarsh Shukla

Counsel for Respondent :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the appellant, learned AGA for the State and perused the record.

2. By means of instant appeal preferred under Section 14-A(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act"), the appellant has assailed the order dated 05.01.2024 passed by the Special Judge SC/ST Act, Sitapur (in short "trial court"), whereby, the trial court allowed the application seeking discharge, filed by opposite party no.2. The relevant portion of order dated 05.01.2024 reads as under:-

"उभय पक्ष को सुना तथा पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से विदित होता है कि प्रस्तुत प्रकरण में वादी द्वारा नामजद अभियुक्तगण व अन्य चालीस अभियुक्तगण पर उसके घर में आग लगाकर उसका नुकसान करने, मारने पीटने व जान से मारने की धमकी देने का आरोप लगाया गया है। प्रस्तुत प्रकरण में विवेचक द्वारा मुकदमा दर्ज किये जाने का कोई पर्याप्त आधार न पाये जाने पर न्यायालय के समक्ष अन्तिम आख्या प्रस्तुत की गयी थी तदोपरान्त वादी द्वारा न्यायालय के समक्ष अन्तिम आख्या का विरोध करने पर न्यायालय द्वारा मामले को परिवाद के रूप में दर्ज कर अभियुक्तगण को तलब किया गया है जिसमें अभियुक्ता कनीज फातिमा द्वारा यह प्रार्थनापत्र प्रस्तुत कर स्वयं को उक्त वाद से उन्मोचित किये जाने की याचना की गयी है।

पत्रावली पर उपलब्ध पुलिस प्रपत्रों व अन्य कागजातों के अवलोकन से विदित होता है कि वादी फूलचन्द्र व नगरपालिका परिषद बिसवां के मध्य विवादित घटनास्थल के कब्जे को लेकर विवाद चल रहा था जिस सम्बन्ध में दोनों पक्षों द्वारा दीवानी वाद न्यायालय में दाखिल किया गया था। वादी फूलचन्द्र द्वारा नगरपालिका परिषद बिसवां की भूमि पर कब्जा कर निवास किया जा रहा था। दोनों पक्षों के मध्य दीवानी प्रकृति के विवाद को उभय पक्ष द्वारा स्वीकार भी किया गया है। पत्रावली पर अधिशासी अधिकारी, नगरपालिका परिषद बिसवा जिला सीतापुर द्वारा पारित आदेश दिनांकित 20.05.1996 की प्रमाणित प्रति उपलब्ध है कि जिसमें इस आशय का आदेश पारित किया गया है कि "फूलचन्द्र द्वारा नगरपालिका पार्क की भूमि पर अवैधानिक रूप से बांस बल्ली गाड़कर टट्टर लगाये जा रहे हैं। फूलचन्द्र कोमना किये जाने पर वह नहीं माने तथा इस अवैध अतिक्रमण को हटाने हेतु नगरपालिका की नोटिस भी नहीं ली तथा उसके द्वारा चस्पा की गयी नोटिस भी फाड़ डाली गयी है। पालिका हित में इस अतिक्रमण को हटाना अत्यन्त आवश्यक है। अतः आदेशित

किया जाता है कि आप लोग श्री फूलचन्द्र द्वारा नगरपालिका पार्क की भूमि पर अवैध रूप से किये गये अस्थाई अतिक्रमण को कल दिनांक 21.05.1996 को प्रातः सात बज सफाई स्टाफ के साथ ले जाकर हटवा लें तथा मुझे रिपोर्ट करें।" इस प्रकार उपरोक्त आदेश के अवलोकन से यह तथ्य पूर्णतया स्पष्ट है कि वादी फूलचन्द्र द्वारा नगरपालिका के पार्क की भूमि पर अवैध कब्जा करने की दशा में उक्त आदेश पारित किया गया तथा उक्त आदेश का निर्वहन करते हुये नगरपालिका कर्मचारियों द्वारा वादी का अवैध कब्जा हटाया गया। यहाँ यह उल्लेखनीय है कि अभियुक्ता कनीज फातिमा द्वारा उक्त आदेश को लोक सेवक के पदीय कर्तव्यों का निर्वहन करते हुये उक्त आदेश की प्रति प्राप्त की इसके अतिरिक्त न तो अभियुक्ता के मौके पर उपस्थित होने का कोई जिक्र वादी द्वारा अपने बयानों में किया गया है और न ही किसी अन्य गवाहान द्वारा अभियुक्ता की मौके पर उपस्थिति अथवा घटना में संलिप्तता को दर्शाया गया है।

यहाँ यह उल्लेखनीय है कि वादी द्वारा नगरपालिका परिषद बिसवां की भूमि पर कब्जा किया गया था जो कि दीवानी प्रकृति का एक विवाद था किन्तु ऐसा प्रतीत होता है कि मात्र नगरपालिका परिषद पर दबाव बनाने के उद्देश्य से वादी द्वारा यह दाण्डिक प्रवृत्ति का वाद अभियुक्ता पर अधिरोपित किया गया है। *Vikram Johar Vs The State of Uttar Pradesh 2019 (2) Allahabad Cri. G. 497* में माननीय उच्चतम न्यायालय द्वारा अवधारित किया गया है कि

18. Another judgment of this Court, which is to be referred is Priyanka Srivastava and Another Vs. State of Uttar Pradesh and Others, (2015) 6 SCC 287. This Court in the above case has noticed the potentiality of misuse of Section 156(3) to harass those, who are entrusted with various statutory functions. This Court, in fact, has made observations that application under Section 156(3) Cr.P.C. has to be supported by an affidavit so that person making allegation should take responsibility of what they have said in the complaint. In paragraph No.30, following has been held:-

"30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons.

That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores."

19. It is, thus, clear that while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not to hold the mini trial by marshalling the evidence.

इस प्रकार माननीय उच्चतम न्यायालय द्वारा पारित उपरोक्त विधि व्यवस्था के अवलोकन से भी यह तथ्य स्पष्ट है कि लोक सेवक के पद पर नियुक्त किसी व्यक्ति को तलब करने के पूर्व यह देखा जाना अत्यन्त आवश्यक है कि उसके विरुद्ध विचारण के लिये मामला सिद्ध होता है अथवा नहीं। उपरोक्त विचारण से यह तथ्य स्पष्ट है कि अभियुक्ता कनीज फातिमा कथित घटना

की दिनांक को लोक सेवक के पदीय कर्तव्यों के निर्वहन के उद्देश्य से यह आदेश पारित किया गया। अभियुक्ता न तो घटना के समय मौके पर मौजूद थी और न ही अभियुक्ता द्वारा वादी या उसके परिवार के साथ मारपीट की गयी, न तो उसका घर जलाया गया और न ही उसे जान से मारने की धमकी दी गयी। ऐसी स्थिति में अभियुक्ता कनीज फातिमा की ओर से प्रस्तुत प्रार्थनापत्र 42 क स्वीकार किये जाने का न्यायोचित आधार प्रतीत होता है।"

3. The order impugned dated 05.01.2024 passed by the trial court has been challenged on the following main grounds:-

"(A) Because, on 20.6.1996 the investigating officer has filed final report in the present case and against this final report the appellant has filed its objection on 28.10.1996 and the learned court below has registered as a complaint case.

(B) Because, in the said incident the uncle of the complainant namely Behari has sustained injuries and at the same time the appellant is also sustained injuries, but ignoring it the investigating officer has filed final report in the said case.

(C) Because, on 02.07.2007 the statement of the complainant has been recorded under section 200 Cr. P.C. and later on the statement of witnesses recorded under section 202 Cr. P.C. and on the basis of statement of complainant and the witnesses the learned court below has summoned to opposite party no. 2 and other accused persons in the present case.

(D) Because, on 30.11.2015 the learned court below committed the case before Special Judge, S. C./S. T. Act, Sitapur for trial.

(E) Because, on 03.03.2021 the opposite party no. 2 has filed a discharge application under section 227 Cr. P.C. before Special Judge, S.C./S.T. Act Sitapur.

(F) Because, in the aforesaid discharge application dated 03.03.2021 it is written that in paragraph nos. 1 to 4 that opposite party no. 2 who is then President of Nagar Palika Parishad, Biswan, Sitapur, was discharging her official duties and the duties of President of Nagar Palika Parishad is written in Section 84 in U.P. Municipalities Act 1916 and without sanctioning of prosecution trial cannot be done and it is written in Section 197 Cr. P.C.

(G) Because, in para- 6 of the aforesaid application, it is written after perusing the statements of complainant and witnesses recorded under sections 200 and 202 Cr. P.C, the appellant is falsely summoned and in para-7 of the application it is written prima facie no offence made out under S.C./S.T. Act and in para- 8 of the aforesaid application, it is written that a civil suit is pending regarding this matter and in para- 9 of the aforesaid application, it is written that on 15.01.2021 the said interim order and suit was dismissed and it is also written in paras- 10 and 11 of the aforesaid application that the opposite party no. 2 is a old lady and the proceeding is in civil nature.

(H) Because, the complainant has filed its objection against the aforesaid application on 28.11.2023 and in his detailed objection he has written that the accused persons with common intention came to the spot and damages his property, put fire on thatches and also make injury to the complainant and his family members and also pulled away the necessary goods by loading it into tractors and also the accused persons were not discharging any official duties and inspite of stay order of the court they have damaged the property and put fire and also make injuries upon the appellant and his family members and in these circumstances there is no need of any prosecution sanction and in the present case section 197 Cr. P.C. is not applicable as neither the opposite party no. 2 nor other accused persons proved or produced any documents regarding any Board meeting or order of any competent authority for dispossessing or putting fire in the thatches of the appellant.

(I) Because, the date of incident the stay order passed by the learned Civil Judge (Junior Division) Biswan, Sitapur in suit no. 347/1994 was effective and the said order was dismissed in the year 2021 and against that order the appellant has filed a petition A-227 of the Constitution of India no. 386/2023 before this Hon'ble court and this Hon'ble court has passed interim order in favour of the appellant.

(J) Because, the learned Special Judge, S.C./S.T. Act, Sitapur has passed the impugned order only on the basis of this fact that the opposite party no. 2 was on the post of public servant and she was discharging her duties and if such public servant may be trial after considering this fact that the case is made out for trial or not, but at the same time the learned court below while passing the impugned order has not considered this fact that without any notice without any board meeting and without any order the accused persons committed the offence by putting fire and by pulling goods and also made injuries upon the complainant and his family members.

(K) Because, the learned court below has not considered this fact that at that time when the offence was occurred, at that time there was stay order was effective.

(L) Because, the learned court below has not considered this fact while passing the impugned order dated 05.01.2024 that in the present case the accused persons on the order of opposite party no. 2 damages the property of the complainant, made injuries, pulled goods and also put fire on the thatches and in the said incident there is some injured persons and they have given their statements under sections 200 and 202 Cr. P.C.

(M) Because, the appellant is innocent and he has been falsely implicated in the present case.

(N) Because, the appellant has not used any caste related language and also not abuses to the complainant and so there is no offence is made out against the appellant under section 3(2) V S.C./S.T. Act.

(O) Because, there is no credible evidence on record which could prove that the appellant has committed the crime in question or involved in the alleged offence in any manner."

4. Based upon the aforesaid grounds, learned Counsel for the appellant advanced his submissions so as to entertain the present appeal and summon the opposite party no.2.

5. Learned A.G.A. on the other side opposed the present appeal. He stated that the instant appeal is liable to be dismissed at the admission stage. In support of his prayer, learned A.G.A. submitted as under:-

(i) The opposite party no.2 at relevant point of time was Chairman of Nagar Palika Parishad Biswan, District Sitapur (in short 'Parishad'), and Board of Parishad took a decision for removal of encroachment over the land of Parishad and accordingly the order dated 20.05.1996 was passed and in compliance of order dated 20.05.1996, the illegal encroachment was removed on 21.05.1996.

(ii) After removal of encroachment, an FIR was lodged on 21.05.1996 by the appellant implicating the opposite party no.2, who at relevant point of time was Chairman of Parishad, Executive Officer of Parishad and 6 others as also 40 unknown officials of Parishad.

(iii) In relation to FIR lodged on 21.05.1996, final report was submitted by the Investigating Officer after concluding the investigation to which a protest petition was filed and the concerned court after taking note of the statement of appellant made before the concerned court in terms of Section 200 Cr.P.C. and also the witnesses produced by the appellant as required under Section 202 Cr.P.C. as also the injury report/medical opinion, registered the case as complaint case and proceeded in the matter.

(iv) As per injury report/medical report annexed as Annexure No. 3, the appellant sustained four injuries and the same can be caused by blunt object and as per medical report all the injuries are simple in nature.

(v) It appears that while removing the illegal encroachment, an altercation took place between the employees of Parishad, and appellant and due to the same appellant sustained injuries.

(vi) In the entire appeal, it has not been indicated that appellant was in legal/lawful possession over the land where the incident took place.

(vii) It is improbable for a Chairman, to be present at a place of encroachment.

(viii) A perusal of statements, which are on record as Annexure No. 4, it is evident that opposite party no.2, was not present at the place of alleged incident.

(ix) In the aforesaid background of the present case, the present appeal is liable to be dismissed at the admission stage.

6. Considered the submissions of learned Counsel for the parties and perused the records.

7. It appears from the aforesaid, particularly from the ground no. 'I' that to a civil dispute the appellant wants to give criminal colour. In the grounds aforesaid, the appellant has not stated that he was in lawful possession over the property in relation to which the order dated 20.05.1996 was passed and it has also not been stated that opposite party no.2 was present at the place of incident and further, from the statement(s) of appellant and witness, it is apparent that opposite party no.2 was not present at the place of alleged crime. It is also to be noticed that the findings of trial court based upon the order dated 20.05.1996 has

also not been assailed before this Court by means of pleadings and documents/evidence in support thereof and only submissions have been made in this regard.

8. For the reasons aforesaid, this Court finds no force in the present appeal. It is accordingly ***dismissed***. Cost made easy.

Order Date :- 16.05.2024

Jyoti/-