

Court No. - 13

Case :- CRIMINAL APPEAL No. - 1691 of 2024

Appellant :- Lalji

Respondent :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko And 5 Others

Counsel for Appellant :- Amit Kumar Keshari

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 07.03.2024 passed by the Special Judge SC/ST Act, Ambedkar Nagar (in short "trial court"), whereby, the trial court dismissed the complaint case registered as Complaint Case No. 31 of 2019 (Lalji Versus Mohammad Aslam and others).
3. Brief facts of the case are to the effect that an application dated 03.11.2016 under Section 156(3) Cr.P.C. was preferred by the appellant before the competent court of jurisdiction namely CJM District Ambedkar Nagar as appears from Annexure No.1 to the present appeal. According to the averments made in the application dated 03.11.2016, on 11.10.2016 the appellant was constructing a wall on the ancestral property and at about 3 PM, the opposite parties nos. 2 to 6 namely Mohd. Aslam son of Mohd. Jaki, Mohd. Saddam son of Mohd. Aslam, Fatima Nisha wife of Mohd. Aslam, Rajiya daughter of Mohd. Aslam and

Reshma daughter of Mohd. Aslam, appeared and used abusive language and made casteist remarks against the appellant, his wife and one Mishri Lal and also assaulted with 'Lathi' and 'Danda' and in this incident injuries one Kaulesar son of Malgi Devi also sustained injuries. It also appears from this application that the appellant dialed 100 number by his mobile number 8172939309.

4. To establish the case, appellant and Gaena wife of appellant and Bhupendra Kumar son of appellant, appeared before the trial court and their statements were recorded in terms of Section 200 and 202 Cr.P.C.

5. It is to be noted that alleged independent witnesses namely Mishri Lal and Kaulesar, named above, were not produced by the appellant in support of his case, as indicated in the application dated 03.11.2016 preferred by the appellant under Section 156(3) Cr.P.C.

6. It is also to be noted that before the trial court no documentary evidence particularly medical prescription(s) of alleged injured were placed on record.

7. The application aforesaid, preferred under Section 156(3) Cr.P.C., was dismissed by the trial court after considering the material available on record vide order under appeal dated 07.03.2024. The relevant portion of order dated 07.03.2024 reads as under:-

"पत्रावली पर मौजूद प्रपत्र संख्या-4 ब/10 ता 4 ब/11 के अवलोकन से स्पष्ट होता है कि विपक्षीगण द्वारा परिवादी लालजी के साथ अन्य व्यक्तियों के विरुद्ध मुकदमा पंजीकृत कराया गया था तो परिवाद संख्या - 3731/15 मो० असलम बनाम रामकेवल आदि न्यायालय मुख्य न्यायिक मजिस्ट्रेट अम्बेडकरनगर में

योजित किया गया था। पत्रावली पर उपलब्ध प्रपत्र संख्या-4 ब/13 परिवाद संख्या - 3731/15 में न्यायालय द्वारा पारित आदेश दिनांक 19.10.2016 की सत्य प्रतिलिपि संलग्न है जिसके अवलोकन से स्पष्ट होता है कि अन्य व्यक्तियों के साथ न्यायालय द्वारा परिवादी लालजी को धारा- 147, 323, 504 भा.दं.सं के तहत तलब करने का आदेश पारित किया गया है। प्रपत्र संख्या 4 ब/14 ता 4 ब/20 व अन्य प्रपत्रों के अवलोकन से स्पष्ट होता है कि पक्षकारों में जमीनी विवाद है। इस प्रकार उपरोक्त प्रपत्रों के अवलोकन से स्पष्ट होता है कि उभयपक्ष के मध्य जमीनी विवाद है तथा विपक्षी द्वारा योजित परिवाद में परिवादी को तलब किया जा चुका है परन्तु उपरोक्त के संबंध में परिवादी द्वारा अपने प्रार्थनापत्र में कोई भी अभिकथन नहीं किया गया है। परिवादी द्वारा दाखिल प्रार्थनापत्र के अवलोकन से यह कहीं भी स्पष्ट नहीं होता है कि ऐसा कोई भी परिवाद परिवादी के विरुद्ध दाखिल किया गया हो, अथवा विचाराधीन हो। ऐसी स्थिति में यह स्पष्ट होता है कि परिवादी द्वारा महत्वपूर्ण तथ्य को छिपा कर प्रार्थनापत्र प्रस्तुत किया गया तथा परिवादी स्वच्छ हाथों से न्यायालय के समक्ष उपस्थित नहीं आया है। पत्रावली पर मौजूद समस्त प्रपत्रों से तथा स्वयं परिवादी के कथनानुसार यह स्पष्ट होता है कि उभयपक्ष के मध्य जमीन संबंधी विवाद चल रहा है। प्रायः यह देखा जाता है कि सिविल प्रकृति के वादों को केवल आपराधिक वादों का रंग देने के लिए प्रार्थनापत्र प्रस्तुत किया जाता है। माननीय उच्चतम न्यायालय द्वारा M/s Indian Oil Corporation vs M/s Nepe India Ltd. & Ors, 2006(6) SCC 736 में यह सिद्धांत प्रतिपादित किया गया है कि "There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed:

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter.

This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice." माननीय उच्चतम न्यायालय द्वारा Sri Gulam Mustafa vs The State of Karnataka 2023 SCC Online SC 603 में यह सिद्धांत प्रतिपादित किया गया है कि "36. What is evincible from the extent case law is that this Court has been consistent in interfering in such matters where purely civil disputes, more often than not, relating to land and/or money are given the colour of criminality, only for the purposes of exerting extra-judicial pressure on the party concerned, which, we reiterate, is nothing but abuse of the process of the Court." G. Sagar Suri And Another Vs State of U.P And others, 2000 (2) SCC 636 में माननीय उच्चतम न्यायालय द्वारा यह सिद्धांत

प्रतिपादित किया गया है कि "It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter..... it is equally true that charged and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court..... The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law." इस प्रकार प्रस्तुत प्रकरण में यह स्पष्ट है कि दीवानी प्रकृति के वाद को मात्र आपराधिक रंग देने हेतु तथा अतिरिक्त न्यायिक दबाव डालने के उद्देश्य से प्रार्थनापत्र प्रस्तुत किया गया है जो अदालत की प्रक्रिया के दुरुपयोग के अतिरिक्त और कुछ नहीं है।

अतः उपरोक्त समस्त विश्लेषण से परिवादी द्वारा अपने परिवादपत्र में किये गये कथनों का समर्थन उसके द्वारा दिए गए बयान अंतर्गत धारा-200 दं.प्र.सं. से न होना, परिवादी व समस्त गवाहों के बयान में महत्वपूर्ण तथ्यों के संबंध में विरोधाभास होना, पांच की संख्या में विपक्षीगण द्वारा हमलावर होने का कथन करने के बावजूद किसी भी चोटहिल का मेडिकल न कराना अथवा उनकी आघात आख्या/ चिकित्सीय रिपोर्ट को प्रस्तुत न करना, चोटहिल कोलेसर तथा अन्य किसी भी स्वतंत्र साक्षी को परीक्षित न कराना, स्वच्छ हाथों से न्यायालय के समक्ष उपस्थित न होना तथा विपक्षी द्वारा परिवादी के विरुद्ध योजित मुकदमा के संबंध में तथ्यों को छुपा कर परिवाद प्रस्तुत करना यह समस्त तथ्य घटना की विश्वसनीयता पर संदेह उत्पन्न करते हैं।

4. अतः मामले के समस्त तथ्य परिस्थितियों को देखते हुए विपक्षीगण को तलब किये जाने का प्रथमदृष्ट्या पर्याप्त साक्ष्य पत्रावली पर उपलब्ध नहीं है। अतः परिवाद निरस्त किये जाने योग्य है।

आदेश

उपरोक्तानुसार परिवादी का परिवाद अंतर्गत धारा - 203 दं.प्र.सं. निरस्त किया जाता है। पत्रावली नियमानुसार दाखिल दफ्तर हो।"

8. The order impugned dated 07.03.2024 passed by the trial court has been challenged on the following grounds:-

"A. Because the appellant belongs to scheduled caste sub caste Chamar and the respondents no. 2 to 6 are of Muslim religion and belongs to backward caste category.

B. Because an incident was occurred on 15.09.2016 and 26.09.2016 by the opposite parties no. 2 to 6 and in an application for lodging of the FIR was moved by the appellant.

C. Because after the knowledge of the said application moved by the appellant moved in the police station and also to the S.P. Ambedkar Nagar, the opposite parties have the enmity against the appellant.

D. Because due to that enmity the opposite parties no 2 to 6 on 11.10.2016 when the appellant had got made construction in his ancestral sariya land on the already constructed foundation then at about 3:00 P.M. the opposite parties no. 2 to 6 came on the said land pre- planned having Lathi Danda started to abuse by caste and started to with Lathi- Danda to the Appellant, his wife Ganda and the Rajgir Mishrilal and on making objection they demolished the wall constructed by the appellant and threatened to kill. In the said incident one Kaulesar has also been injured. The appellant called the police by dialing 100 and the police assured to take action on the same day, but nothing has been done.

E. Because the opposite parties no. 2 to 6 abused the appellants and his family members and they beaten them with lathi Danda and Kick and fist.

F. Because the appellant on the next day on 13.10.2016 the appellant moved an application to the S.H.O. police station Akbarpur District Ambedkar Nagar and after that when the S.H.O had not lodged the FIR then the appellant moved an application to the S.P. District Ambedkar Nagar on 17.10.2016 through registered post.

G. Because the police of the police station Akbarpur Ambedkar Nagar have not taken any action, it neither lodged the FIR nor had got conducted the medical of the injured person.

H. Because the appellant filled an application on 03.11.2016 under section 156 (3) Cr.P.C. before the court below and the same was registered as complaint case no. 31/2019 (Lalji versus Mohd. Aslam and others) vide order dated 25.02.2019.

I. Because after registering the case as complaint case, the statement of the complainant was recorded under section 200 Cr.P.C. on 07.09.2021.

J. Because the statement of Gena wife of Lalji had been recorded under section 202 Cr.P.C. on 19.06.2023 as P.W. 1.

K. Because the statement of Bhupendra Kumar had also been recorded on 31.07.2023 under section 202 Cr.P.C. as P.W. 3.

L. Because the complainant and the witnesses in their statement specifically stated that the opposite parties came on the place of incident armed with Lathi- Danda and abused the appellant and his family members by caste and beaten them.

M. Because the learned trial court without considering to the facts of the case, wrongly and illegally rejected the complaint of the appellant vide its judgment and order dated 07.03.2024.

N. Because the learned trial court completely ignored the real facts of the case wrong presumption passed the impugned judgment and order dated 07.03.2024.

O. Because the learned trial court had failed to considering the fact that the appellant approached to the concerned police on the same day and firstly it was the duty of the police to have got the medical of the injured person and the same has not been done by the police.

P. Because the learned trial court wrongly and illegally rejected the complaint case on the ground that the fact had been concealed by the appellant and further the fact which is shown are not concerned to the present incident.

Q. Because the occurrence of incident and committing of offence if prima facie shows from the version of the complaint and statement of the complainant and the witnesses even then the learned trial court wrongly and illegally rejected the complaint case of the appellant.

R. Because the learned trial court has passed the impugned judgment and order dated 07.03.2024 which is against the aim and object of The Scheduled Caste And Scheduled Tribes (Prevention Of Atrocities) Act, 1989.

S. Because the learned trial court has passed the impugned judgment and order without applying a judicial mind and without considering and appreciating the material available on record and as such the same is contrary to the law and liable to be quashed."

9. Based upon the aforesaid grounds, learned Counsel for the appellant submitted that contents/averments made in the application dated 03.11.2016 preferred under Section 156(3) Cr.P.C., were duly proved by the appellant and witnesses produced before the trial court as required under Sections 200 and 202 Cr.P.C.. Thus, dismissing the case of the appellant, the trial court committed error in law and fact both.

10. Learned A.G.A., opposing the present appeal submitted that in the facts of the case particularly the observation made by the trial court in the order impugned dated 07.03.2024 no interference is required and the appeal is liable to be dismissed at admission stage. He further submitted that from the application dated 03.11.2016 preferred under Section 156(3) Cr.P.C. , it is apparent that there was some private/civil dispute between the parties and appellant wants to give criminal colour

to a civil dispute. Elaborating this aspect, it is also stated that to support the allegation that opposite party no.2 and three other persons assaulted the entire family members of the opposite party no.2, no documentary evidence including medical prescription was placed on record. As such the order of trial court dated 07.03.2024, is just and proper and is not liable to be interfered.

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

12. Upon due consideration, this Court finds that preferring an application under Section 156(3) Cr.P.C. by the appellant, is/was nothing, but abuse of process of law as the allegations regarding assaulting the appellant and his family members with 'Lathi' and 'Danda' are completely vague because to establish the same, no documentary proof was placed before the trial court, as appears from the impugned order itself, and before this Court also no document has been placed on record and further, it is apparent from the application itself that the dispute between the parties relates to construction of Wall, which is a dispute of civil nature.

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

Order Date :- 22.05.2024

Jyoti/-