

Court No. - 80

Case :- CRIMINAL APPEAL No. - 12751 of 2024

Appellant :- Manik Chandra Pal And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Ajay Singh Yadav, Sanju Singh

Counsel for Respondent :- Deepak Kumar Tripathi, G.A.

Hon'ble Nalin Kumar Srivastava, J.

1. List has been revised. None is present on behalf of the informant / respondent no.2. However, learned counsel for the appellants and learned A.G.A. for the State are present.

2. Heard learned counsel for the appellants and learned A.G.A. and perused the entire record.

3. This Criminal Appeal under Section 14-A (1) of The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the SC/ST Act') has been preferred to quash the impugned cognizance / summoning order dated 17.7.2023 passed by the Special Judge (SC/ST Act), Kaushambi in Case No.188 of 2023 (State Vs. Manik Chandra and Another) relating to Case Crime No.07 of 2023 under Sections 323, 504, 506 IPC and Section 3(2)5Ka, 3(1)(Dha) of the SC/ST Act, Police Station Manjhanpur, District Kaushambi. Further prayer has been made to quash the entire proceedings of the aforesaid case.

4. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated in the present case. F.I.R. in this case was lodged belatedly and there is no plausible explanation offered by the prosecution regarding the delay. It is further submitted that the essential ingredients to constitute the offence under Sections 3(1)(Dha) of the SC/ST Act are completely missing in this case. No offence under the SC/ST Act is made out from the averments made in the F.I.R. itself. It is also submitted that the I.O. of the case has proceeded to record the statements of the informant and injured of this case as well as the witnesses and from the perusal of their statements no offence at all is made out against the appellants. It is also submitted that the learned Special Judge was not competent to take cognizance in this matter. It is also submitted that the F.I.R. lodged in this case is purely an abuse

of process of the Court.

5. It is also submitted that the injured of this case was medically examined and only three simple injuries were found on the person of the injured in the form of complaint of pain in different parts of the body. No serious injury or fracture was found on the person of the injured. The doctor has also opined that all injuries are caused by hard and blunt object which are simple in nature, which falsifies the prosecution story. As a matter of fact, the present appellants were not present at the place of occurrence at the relevant point of time. The mandatory provisions of law have not been taken into account of by the learned Special Judge while taking cognizance of the offence and passing the summoning order against the appellants. The impugned order has been passed without applying the judicial mind and it is illegal and unsustainable in the eyes of law.

6. Another limb of argument is that the court concerned totally discarded the fact that the incident was not happened at a public place within the public view and there is no independent witness of the occurrence. It is also submitted that the medical evidence also was not in consonance with the prosecution case but the court concerned ignored this fact. It is also submitted that there was no cogent and reliable evidence to submit charge-sheet in this matter but the learned court concerned again failed to consider this fact and in an arbitrary manner, cognizance was taken into the offences alleged to be committed by the appellants and further to pass summoning order against the appellants.

7. The next argument advanced by the learned counsel for the appellants is that the I.O. of this case collected absolutely no evidence to the effect that any intentional insult or intimidation was made by the appellants. It is further submitted that there is not even an iota of evidence on record as collected by the I.O. that the appellants committed the alleged offence for the simple reason of the injured being a member of SC/ST community. It is also submitted that the appellants never threatened the injured for life and no independent witness came forward to support the prosecution version in this respect.

8. It is next submitted that the entire proceeding is nothing but abuse of process of law. Several other submissions in order to demonstrate the falsity of the allegations made against the appellants have also been placed forth before the Court. Lastly, it is submitted that the impugned order suffers from infirmity and illegality warranting interference by this Court.

9. Per contra, learned State counsel opposed the appeal and it has been submitted that since the charge-sheet has been submitted under sections 323, 504, 506 IPC, it makes no difference if no fracture was found on the person of the injured of this case. It is also submitted that the incident took place in an open place and some persons also witnessed the incident, hence the offence was committed in a place within the public view. It is also submitted that there are ample evidence against the appellants in connection with the offence under section 3(1)(s) of the SC/ST Act and sections 323, 504, 506 IPC because the appellants hurled abuses by caste related remarks to the injured and he was also threatened by him for dire consequences. It is also submitted that the appeal has no force. The orders taking cognizance and summoning the appellants as well have been passed keeping in view the relevant legal norms by the learned Special Judge which need not any interference. There is no illegality in the impugned order and the I.O. of this case after collecting ample evidence against the appellants has submitted charge-sheet and the learned trial court applying its judicial mind passed the summoning and the cognizance order as well. It is further submitted that the appellants are not entitled for any relief, thus, the present appeal may be dismissed.

10. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order.

11. So far as the present case is concerned, the F.I.R. of the case consists of the allegations that on 4.1.2023 at 3:00 P.M. when the informant was present in the Court campus in connection with the pairvee of some case, the accused Manik Chandra and one unknown person came there and hurled abuses with caste related remarks and also made an assault upon him and the incident was video-graphed by some person. When Ranjit, the son of the informant, complained of this matter to Ashish Chandra, the brother of Manik Chandra, he also hurled abuses by caste related remarks to the son of the informant. F.I.R. was lodged and after investigation, the Investigating Officer submitted charge-sheet against accused Manik Chandra under Sections 323, 504, 506 IPC and Section 3(2)5Ka, 3(1)(Dha) of the SC/ST Act and against accused Ashish Chandra under Sections 504, 506 IPC and Section 3(2)5Ka, 3(1)(Dha) of the SC/ST Act.

12. It appears from the record that the Investigating Officer of the case has collected ample evidence to the effect that the incident occurred in a Court Campus which is a public place within public

view. The informant of this case is a member of SC/ST community. As per F.I.R. of this case, he has sustained injuries, although the injuries are simple in nature and the injured was medically examined after 2 days of the incident but the doctor affirms this fact that the injuries are about 2 days old. What actual words were used by the accused Manik Chandra at the time of the incident has been disclosed in the F.I.R. and in the statement of the informant given to the Investigating Officer, hence there was a prima facie case made out against accused Manik Chandra. So far as the accused Ashish Chandra is concerned, he hurled abuses to the son of the informant on phone, in my view no offence is made out against Ashish Chandra.

13. Charge-sheet in this matter has been submitted under section 323 IPC as only simple injury has been caused to the injured and no fracture was found on the person of the injured. The Court also takes notice of this fact that there is no possibility of false implication at this stage.

14. It is true that the F.I.R. of this case has been lodged after two days of the incident, but this is the primary stage of trial and evidence at length has to be adduced by the prosecution during the trial and the Court may find satisfactory explanation for the delay in lodging of the F.I.R.

15. To find out the requisite ingredients to establish an offence under Section 3(1)(s) [also to be read as Section 3(1)(dha)], the provisions thereof, are reproduced below :

"3. Punishments for offences of atrocities.— (1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view."

16. So far as the offence under Section 3(1)(s) of the SC/ST Act is concerned, the evidence on record must be capable of showing that the appellants intentionally insulted the informant or intimidated him with intention to humiliate in any place within public view and further also abused the informant by caste related remarks in any place within public view. It is true that the offence under Section 3(1)(s) of the SC/ST Act comes into picture only when intentional insult or intimidation or abusing takes place in any place within public view.

17. It is trite law that at the stage of taking cognizance and

summoning the accused, the Magistrate / Court dealing with the matter is required to apply judicial mind only with a view to take cognizance of the offence to find-out as to whether prima-facie case has been made out to summon the accused or not. The Court at this stage is not required to analyze the material on record to find-out as to whether the matter may lead to conviction or not. Sufficiency of materials for the purpose of conviction is not required. It is also settled that even when there are materials raising strong suspicion against the accused, the Court will be justified in taking cognizance and summoning the accused. The Court / Magistrate is not required to analyze the evidence on merits but to scrutinize the evidence only with a view as to whether sufficient grounds exist to initiate criminal proceedings in respect of the offence which is said to have been committed (**Vide : R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, 2005 SCC (Cr.) 283**).

18. Further, what is 'sufficient ground' for proceeding to issue summons and warrant has been clarified in **Nirmaljit Singh Vs. State of West Bengal, (1973) 3 SCC 753** and it is held therein that the words "sufficient ground" used in Section 203 have been construed to mean the satisfaction that a prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit and not sufficient ground for the purpose of conviction.

19. It is also not out of the scope of subject here that an order passed to summon the accused is an opinion of the Magistrate and to pass a detailed order or to state the grounds of his satisfaction is not required from a Magistrate, however the summoning order must be a speaking order.

20. In **State of Gujarat v. Afroz Mohammed Hasanfatta, (2019) 20 SCC 539**, the Hon'ble Apex Court reiterated that for issuance of summons strict standard of proof of satisfaction of the Magistrate regarding sufficiency of ground(s) to proceed in the matter is not required and such satisfaction should be based only on prima facie evidence. Before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it. Sufficiency of evidence to hold accused guilty, merits of matter and defence pleas have to be examined at the stage of trial and not at the stage of issuance of process. Whether statement of a witness is hearsay and whether it is supported by "contemporaneous

exposition" and whether it would fall under "res gestae" and whether it is admissible or not is to be seen only at the time of trial.

21. In the instant matter, the materials available on record go to show that the appellants very well knew that the injured belonged to SC/ST community and that was the reason offence was committed with him. Furthermore, the offence took place in an open place in day time in the presence of other persons also. There is also prima facie evidence on record that the informant was beaten by the appellant no.1 Manik Chandra and he also hurled abuses in the name of his caste and threatened him for life. The injured / informant of this case very well supported the prosecution case when interrogated by the Investigating Officer. The injury report of the injured is also available on record and the doctor has found injuries on the person of the injured in the form of complaint of pain. The informant of this case has also corroborated the F.I.R. version. Hence, in this matter, as per the materials available on record, at this stage, it cannot be said that offences levelled against the appellant no.1 Manik Chandra are not attracted. A prima facie case is made out against the appellant no.1 Manik Chandra to proceed for trial. Further, to decide the pleas raised before this Court leading of evidence would be required, which can appropriately be done before the court concerned at appropriate Stage.

22. The Hon'ble Supreme Court in **Sarah Mathew vs. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62** held that cognizance is taken when a Magistrate or Court applies his mind or takes judicial notice of an offence with a view to initiating criminal proceedings in respect of the offence which is said to have been committed. This is the special connotation acquired by the term "cognizance", and is given the same meaning wherever it appears in Chapter XXXVI as well.

23. Moreover, the view vented in **Jagdish Ram vs. State of Rajasthan and another, AIR 2004 SC 1734** by the Hon'ble Apex Court sets a reminder that taking cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

24. Further, the Hon'ble Apex Court in the case of **Ramesh Chandra Vaishya vs. State of U.P. and another, (2023) 17 SCC 615** has been pleased to observe that the first question that calls for an answer is whether it was at a place within public view that the appellant hurled caste related abuses at the complainant with an intent to insult or intimidate with an intent to humiliate him.

25. In view of the aforesaid discussion, I am of the opinion that there is no force in the submissions made by the learned counsel for the appellants in respect of appellant no.1 Manik Chandra against whom prima facie case is made out. The Court concerned did not err in taking cognizance into the matter and thereby to summon the accused / appellant no.1 Manik Chandra to face trial for the offences made out prima facie. There is no illegality, infirmity or perversity in the impugned order in respect of appellant no.1 Manik Chandra. The prayer made in the appeal in respect of appellant no.1 Manik Chandra is refused.

26. So far as the appellant no.2 Ashish Chandra is concerned, since no offence is made out against him, as discussed hereinabove, the impugned cognizance / summoning order dated 17.7.2023 passed by the Special Judge (SC/ST Act), Kaushambi as well as entire proceedings of Case No.188 of 2023 (State Vs. Manik Chandra and Another) relating to Case Crime No.07 of 2023 under Sections 323, 504, 506 IPC and Section 3(2)5Ka, 3(1)(Dha) of the SC/ST Act, Police Station Manjhanpur, District Kaushambi, in respect of appellant no.2 Ashish Chandra, are hereby quashed.

27. The Appeal is **partly allowed**.

Order Date :- 28.4.2025

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