

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

283

CRA-S-522-2023

Date of Decision: 16.03.2023

Rajesh Kumar and another

.... Appellants

Versus

State of Haryana

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Amit Sharma, Advocate for the appellants.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

ASHOK KUMAR VERMA, J. (ORAL)

Reply dated 14.03.2023, filed by way of affidavit of Sh. Rohtash Singh, Deputy Superintendent of Police, Barwala, District Hisar, on behalf of respondent-State is taken on record.

The appellants, namely, Rajesh Kumar and Surender Kumar, have filed the present appeal against the impugned order dated 27.01.2023 passed by the learned Additional Sessions Judge, Hisar whereby their application filed under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No. 1241 dated 29.12.2022 registered under Sections 323/34 and 506 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short-'the SC & ST Act') at Police Station Barwala, was dismissed.

At the outset, learned counsel for the appellants submits that

the instant appeal qua appellant No. 1-Rajesh Kumar, has been rendered infructuous and may be disposed of as such, because appellant No. 1 has since been arrested by the police.

In view of the above, the instant appeal is disposed of as having been rendered infructuous qua appellant No. 1-Rajesh Kumar, only.

As per prosecution story, complainant-Pinku, who belongs to Scheduled Castes had supplied shuttering articles on rent to the appellants from his shop in December, 2021. Neither the appellant paid the rental charges nor returned the said shuttering articles. Two months prior to the registration of the instant FIR, when the complainant along with his father and neighbours, namely, Joginder and Jai Singh, went to the appellants for return of his shuttering articles as well as for his rent then the appellants and their co-accused-Rahul, came in the open street outside their house and appellant No. 1-Rajesh abused the complainant and also uttered casteist remarks “*Dhedh, Kamin*” and asked him as to how he dared to ask for money. Co-accused/Rahul and appellant No. 2-Surender Kumar, also scuffled with the complainant and threatened him by “*Saale Dhedh*” and fired a shot upon him. The complainant saved his life by running away from the spot.

Learned counsel for appellant No. 2 *inter alia* contends that he has falsely been implicated in the instant case. At the time of occurrence, appellant No. 2 was posted in Rajasthan as he is serving in Indian Army. There are only general and vague allegations against him.

No offence under the SC & ST Act, is made out. In fact, appellant No. 2-Surender Kumar, had advanced a loan of Rs.98,000/- to the complainant and when he demanded back the said amount from the complainant, he registered a false case against appellant No. 2 and his co-accused. The dispute between the parties is of civil nature which has been given a criminal colour. Appellant No. 2-Surender Kumar, is ready and willing to join the investigation as and when called by the Investigating agency and shall abide by any condition which may be imposed by this Court.

On the other hand learned counsel for the State vehemently opposed the submissions made by learned counsel for the appellant submitting that appellant No. 2 and his co-accused have specifically been named in the FIR and they insulted the complainant in the name of his caste.

I have heard learned counsel for the parties and carefully gone through the relevant record.

Keeping in view the facts and circumstances of the case and also the fact that the dispute between the parties is of civil nature, the present appeal is allowed qua appellant No. 2, only. Appellant No. 2-Surender Kumar, is directed to join investigation within 30 days from today and in the event of his arrest, he shall be released on bail subject to furnishing personal bonds and surety to the satisfaction of Arresting/ Investigating Officer. Appellant No. 2 shall join the investigation as and when called upon to do so and shall abide by the conditions as provided under Section 438(2) of the Cr.P.C.

It is made clear, in case appellant No. 2 fails to join the investigation, then the State shall be at liberty to move an application for cancellation of the present anticipatory bail granted to him.

Any observation made here-in-above is neither an expression of opinion on the merits of the case nor shall the trial Court advert to these comments.

March 16, 2023
rishu

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No