

Court No. - 84

Case :- CRIMINAL APPEAL No. - 7821 of 2023

Appellant :- Seema Bharadwaj

Respondent :- State of U.P. and Another

Counsel for Appellant :- Nipun Singh, Vivek Chaubey

Counsel for Respondent :- G.A., Atharva Dixit

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Rejoinder affidavit filed on behalf of the appellant is taken on record.

Heard learned counsel for the appellant, learned counsel for the opp. party no. 2 and perused the record.

The present appeal has been preferred against the entire proceedings as well as the summoning order dated 2.5.2023 passed by Special Judge SC/ST Act, Ghaziabad, S.S.T.No. 1895 of 2022, State vs. Seema Bharadwaj, case crime no. 1370 of 2022, under sections 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act, police station Kavinagar District Ghaziabad.

As per the facts of the case, an FIR was lodged by one Smt. Neetu against the appellant on 29.9.2022 at 20.11 hours regarding the incident of the same day at 13.30 hours that the first informant is the care taker /house hold help in the house of the mother of the appellant. The appellant was having a property dispute with her brother Deepak Tyagi. She was living in the house since 26.2.2022 against the wishes of her family members. She used to quarrel with her mother, administer her the wrong medicines forcibly, as a result, the mind of her mother was disturbed. The appellant used to say that she had prepared a forged will and on the basis of that forged will she would take possession over the house in dispute. As the first informant is a care taker /house keep on behalf of the mother of the appellant, the appellant wanted her to leave the work of the house in dispute, so she used to abuse, hurl caste based words and thrashed her. On 4.5.2022, 9.5.2022 and 9.6.2022, the appellant thrashed the first informant/ other servants of the quarter. The appellant hurled caste based words and abusive language against the first informant so that she may leave her job. Regarding the incident dated 9.6.2022, an FIR under sections 342, 147, 307, 504, 506 I.P.C. was lodged as case crime no. 1123 of 2022 on 21.8.2022 by the first informant- Neetu against the appellant and one Ramnika Bharadwaj.

On 29.9.2022 when the first informant was going for her house hold work in the

house of the mother of the appellant, 5-6 unknown persons stopped her on the road at about 1.30 P.M. They all were equipped with batons, pistols and knives etc. They started hurling wild abuses, caste based words and gave her threat not to work in the house of the mother of the appellant. They also asked her to withdraw the above case no. 1123 of 2022 filed by her against the appellant. On her refusal they disclosed that as per the instruction of Seema/ the appellant, Ramansh and Ramanuj, they would put her to death and with the intention of committing her murder, they assaulted her with knives and batons. They opened fire in the air and thrashed her causing her grievous injuries. On her hue and cry, the passersby Susmikant Mahanti and Rohit Kumar Singhal son of Deepak Kumar rescued her from the clutches of the culprits and took her to the police station thereafter her medical was done. The victim fears for her life from the appellant. Because of paucity of means, she is pursuing her work at the house of the appellant's mother.

On the basis of this FIR, after investigation, the charge sheet was filed against appellant only under sections 323, 504, 506 I.P.C. and sections 3(2)(va) of SC/ST Act and the investigation was kept continued against 5-6 unknown persons and other named person in the FIR.

Mentioning the background of this FIR, learned counsel for the appellant submitted that the father of the appellant executed a registered will deed on 6.8.2013 regarding the property in dispute measuring 1800 yards. As per this will, 600 yards of the property was bequeathed in the name of Dhurv, the son of Deepak Kumar, 600 yards was given to the appellant and regarding 600 yards a gift deed was executed in the name of Ramit Tyagi son of another brother of the appellant. Admittedly, in the maternal family of the appellant apart from appellant there are her two brothers Deepak Tyagi and Rajiv Tyagi and Sushila Tyagi, the mother of the appellant. The mother of the appellant Sushila Tyagi is living in the same house. The father who is said to have executed the will deed expired on 6.4.2015. According to the learned counsel for the appellant, Deepak who is in the back of this FIR want to dispossess the appellant from the house in dispute. While admittedly, the appellant is in possession over her portion in the house. The civil cases regarding this property between the parties are pending before the civil court wherein no interim relief has been granted to either of the parties. The appellant has filed a transfer application in the matter, whereby the proceedings of both these civil cases filed by the appellant and her brother have been stayed. It is submitted that a criminal case have also been filed by the daughter of the appellant on 3.5.2022 being case crime no. 546 of 2022 against the brother of appellant, wherein charge-sheet has been filed under sections 323 and 506 I.P.C. against him. It is alleged that on behest of Deepak the brother of the appellant three FIRs have been lodged against the appellant and her family members, one FIR was lodged by one Sonia, the co worker of the present first informant Neetu and two FIRs were lodged by Neetu herself, one is present case being crime no. 1370 of 2022 dated 29.9.2022 and other FIR is dated 21.8.2022 registered as case crime no. 1123 of 2022 under sections 342, 147, 307, 504, 506 I.P.C. as is mentioned in the FIR itself.

It is argued by the learned counsel for the appellant that the present FIR was lodged against the appellant and 3 others named persons Ramansh, Ramanuj and Ramanika and 5-6 unknown persons but except the appellant investigation against all the rest accused persons is still continuing. The attention of the court is drawn towards the facts of the FIR that as per the allegations in the FIR the appellant was not present on the spot at the time of the incident. Whatever incident took place that is said to have been committed by 5-6 unknown persons and when the appellant was not present at the spot at the time of the incident she cannot be chargesheeted under the above mentioned sections. It is further argued that the FIR was lodged under sections 147, 148, 149, 323, 504, 506, 352, 307, 120-B I.P.C. and section 3(2)va of SC/ST Act but the Investigating Officer chose not to file charge-sheet under section 120-B I.P.C. along with other sections of Indian Penal Code and the charge sheet filed against the appellant is only under sections 323, 504, 506 I.P.C. and section 3(2)va of SC/ST Act. The appellant cannot be implicated in the above mentioned sections when admittedly the appellant was not present on the spot at the time of the incident. It is further argued that while passing the impugned order the trial court did not use its judicial mind. The order was passed in a mechanical manner which is not permissible in the statute. Again, it is argued that it is the misuse of the SC/ST Act as in the previous FIRs lodged by Sonia, one of the house help of Sushila, the mother of the appellant, and the first informant in the present case Neetu, in both those cases the appellant is on interim bail, so now in a pre-planned manner, the present FIR has been lodged against her so that she could not take anticipatory bail from this court.

By placing the judgment of ***Iqbal @ Bala and others Vs. State of U.P. and others, (2023) 8 SCC 734***, it is argued that it is not enough for the court to look into averments made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the court owes a duty to look in to many other attending circumstances emerging from the record of the case over and above. Thus, on the basis of above facts, it is argued that the brother of the appellant Deepak Kumar has used the first informant as a tool to harass and pressurize the appellant so that she could surrender her portion of the property in dispute in his favour.

The prayer is opposed by the learned counsel for the opp. party no. 2. He has submitted that by mistake section 120-B I.P.C. has been left out by the Investigating Officer in the charge-sheet. The court has not to see the sections mentioned rather it is the duty of the court to look into the complete facts and come to the conclusion whether any offence is made out on the basis of the version of the FIR and the evidence placed on record during investigation against the appellant or not. It is again submitted that at this stage, it is not to be seen that under what sections offence can be said to be made out against the appellant because that is to be decided at the stage of framing charge only. There is ample evidence on record to take cognizance against the appellant.

By filing this appeal the cognizance and summoning order along with entire proceedings has been challenged by the appellant. By the impugned order, the trial court took cognizance against the appellant u/s 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act.

It is clear that the appellant has approached this court against the cognizance order passed against her wherein the cognizance under section 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act was taken against the appellant. The court cannot imagine that under what sections charge would be framed by the trial court. The court has to look into the facts as they are before the court in the present condition and before the court there is only cognizance order dated 2.5.2023 whereby the cognizance has been taken against the appellant u/s 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act. Admittedly, at the time of the incident the appellant was not present on the spot. So in the opinion of the court, in her absence on the spot cognizance under section 323, 504, 506 I.P.C. and section 3(2) va of SC/ST Act cannot be taken against the appellant. For section 3(2)(va) of SC/ST Act also not mere the knowledge of the first informant being a person belonging SC/ST community is enough for the accused to implicate him but as interpreted by the Apex Court in judgment ***Hitesh Verma Versus The State of Uttarakhand and Another, Criminal Appeal No.707 of 2020 (arising out of SLP (Criminal) No.3585 of 2020***, dated **05.11.2020** mere the victim belonging to SC/ST community is not enough for implicating the accused persons under the sections of SC/ST Act. What is necessary is that the offended words must have been used by the accused person against the victim with intent to humiliate her/him because of her/him belonging to SC/ST community. The motive behind the incident as per FIR is that the appellant did not want first informant to work as house help in her mother's house. The incident did not take place because the first informant belongs to SC/ST community.

In the present case, the FIR was lodged under sections 147, 148, 149, 323, 504, 506, 352, 307, 120-B I.P.C. and section 3(2)(va) of SC/ST Act. After investigation the Investigating Officer filed chargesheet only under sections 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act against the appellant. The investigation against rest known and unknown accused persons is still continuing. The trial court has taken cognizance, only on the basis of charge-sheet under the aforesaid sections against the appellant. The order impugned clearly indicates that the trial court has not used its judicial mind while passing the impugned order because as mentioned in the order if the trial court had gone through the documents on record, it would have gone through the FIR also. The presence of the appellant on spot is not shown by the first informant in the FIR. So the cognizance under section 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act against the appellant is not possible. If the cognizance had been taken under section 120-B I.P.C. along with other sections then the position would have been different.

Thus, it is found that the trial court has not applied its judicial mind while passing the impugned order and has passed the impugned order in a mechanical manner.

The impugned cognizance order dated 2.5.2023 passed by Special Judge SC/ST Act, Ghaziabad, in S.S.T.No. 1895 of 2022, State vs. Seema Bharadwaj, case crime no. 1370 of 2022, under sections 323, 504, 506 I.P.C. and section 3(2)(va) of SC/ST Act, police station Kavinagar District Ghaziabad against the appellant is set aside.

The trial court is directed to pass a fresh order in this matter after going through the above discussion within two months from the date of production of the certified copy of this order before that court.

The appeal is **allowed**.

Order Date :- 31.10.2023/Gss