# Kaushal vs State Of U.P. And Another on 1 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44982

A.F.R.

Court No. - 80

Case :- CRIMINAL APPEAL No. - 10426 of 2024

Appellant :- Kaushal

Respondent :- State of U.P. and Another

Counsel for Appellant :- Jai Shanker Malviya

Counsel for Respondent :- G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. This criminal appeal under Section 14-A (1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'the SC/ST Act') has been preferred by the appellant - Kaushal with the prayer to set-aside the cognizance / summoning order dated 2.12.2023 passed by the Special Judge (SC/ST Act) Moradabad, the charge sheet and the entire proceedings of Special Session Trial No. 1771 of 2023, arising out of case crime no. 482 of 2023, under Sections 342, 504, 506, 323 IPC and 3(1)(da), 3(1) (dha), 3(2)(5 ka) the SC/ST Act, P.S. Civil Lines, District Moradabad.

2. Heard learned counsel for the appellant as well as the learned A.G.A. for the State and perused the entire record.

3. Prosecution case, as culled out from the record, is that an altercation took place between the named accused persons including the present appellant and the informant side at a coaching centre. It is alleged that after closing of the coaching when the informant was returning to his home in day

time, the present appellant alongwith his associates hurled abuses with caste related remarks and threatened him for dire consequences and he was also beaten with kicking and fisting and his money was also robbed by the accused persons. Some independent persons of the same vicinity reached there and the accused persons fled away, however, police did not take proper action and the present appellant was simply challaned under Section 151 CrPC whereas the incident was captured in the CCTV footage. However, subsequently F.I.R. was lodged and after investigation charge sheet under Sections 342, 504, 506, 323 IPC and 3(1)(da), 3(1)(dha), 3(2)(5 ka) of SC/ST Act was filed and cognizance was taken by the Court of the said offences and the accused persons were summoned to face trial accordingly.

4. It is submitted by the learned counsel for the appellant that appellant is innocent and has been falsely implicated in this case. Admittedly, a fracas took place between two groups of students but it is totally false to say that on account of said heated argument any assault was made by the appellant alongwith his associates upon the informant. The eye witnesses have not supported the prosecution case. No serious injuries have been caused to the informant / injured of this case. In the x-ray performed by the doctor no adversity has been discovered. Appellant has no criminal history to his credit. It is further submitted that offence under SC/ST Act is also not made out against the present appellant.

5. The next argument advanced by the learned counsel for the appellant is that the I.O. of this case collected absolutely no evidence to the effect that the incident took place in any place within the public view and intentional insult or intimidation was made by the appellant. It is further submitted that there is not even an iota of evidence on record as collected by the I.O. that the appellant committed the alleged offence for the simple reason of the injured being a member of SC/ST community. It is also submitted that the appellant never hurled abuses to insult him by caste related remarks nor threatened for life and no independent witness came forward to support the prosecution version in this respect. The impugned order suffers from infirmity and illegality warranting interference by this Court.

6. Per contra, the learned AGA opposed the appeal and submitted that since the appellant and the injured were studying in the same coaching centre, the appellant was very well knowing that the injured belonged to SC/ST community. As per the prosecution case the incident happened on a public road and several persons were present over there and witnesses Shanu and Kamal Hasan saw the incident. Hence, the offence was committed at a place which was within public view. It is also submitted that since the charge sheet has been submitted under Section 323 IPC, no adverse inference may be drawn against the prosecution case, if no fracture was found in the x-ray report of the injured and no serious injury was caused to him. The Court concerned after applying its judicial mind has passed the cognizance and summoning order on the basis of sufficient evidence on record. The trial court was under no obligation to enter into the elaborate discussion of the evidence at the stage of taking cognizance of the offence. Hence, the appeal having no force is liable to be dismissed.

7. 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.

8. 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).

9. 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.

10. 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.

11. 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.

12. To find out the requisite ingredients to establish an offnce under Sections 3(1)(r), 3(1)(s) [also to be read as Section 3(1)(da) and Section 3(1)(dha)] and 3(2)(v) of the SC/ST Act, 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,--
>
> (r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

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

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,--

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine."

13. In the instant matter, the materials available on record are capable to show that the injured and the accused appellant were studying in the same coaching centre, hence, it was rightly supposed by the Investigating Officer that the appellant very well knew that the injured belonged to SC/ST community. Furthermore, the offence took place at a public road in day time in the presence of several persons and the informant was wrongfully confined by the accused persons on road. There is also prima facie evidence on record that the injured was beaten by the appellant who also hurled abuses to him and threatened for life. Though the named eye witnesses Shanu and Kamal Hasan in their statements given to the I.O. have made some statements adverse to the prosecution case but the injured / informant very well supported the prosecution case when interrogated by the Investigating Officer. The injury report of the injured is also available on record. Hence, in this matter, as per the materials available on record, at this stage, it cannot be said that offences levelled against the appellant are not attracted. A prima facie case is made out against the appellant 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.

14. 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.

15. 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.

16. 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.

17. 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 appellant. The Court concerned did not err in taking cognizance into the matter and thereby to summon the accused / appellant to face trial for the offences made out prima facie. There is no illegality, infirmity or perversity in the impugned order. The prayer made in the appeal is refused. The criminal appeal being devoid of merits is liable to be dismissed and the same is accordingly dismissed.

Order Date :- 1.4.2025 safi