

Ankit Dubey And 3 Others vs State Of U.P. And Another on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67417

Court No. - 80

Case :- CRIMINAL APPEAL No. - 9831 of 2024

Appellant :- Ankit Dubey And 3 Others

Respondent :- State of U.P. and Another

Counsel for Appellant :- Lakshmi Kant Pandey, Sandeep Kumar Pandey

Counsel for Respondent :- G.A., Suneel Kumar Mishra

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 appellants - Ankit Dubey, Anurag Dubey, Rekha Dubey and Saroj with the prayer to set-aside the quash /set aside the cognizance / summoning order dated 17.8.2024 passed by the Special Judge (SC/ST Act), Bhadohi and the entire proceedings of Session Trial No. 532 of 2024, arising out of case crime no. 0089 of 2024, under Sections 323, 504, 506 IPC and 3(1)(da), 3(1)(dha) the SC/ST Act, P.S. Bhadohi, District Bhadohi. Further prayer has been made to stay the further proceedings of the said case also the impugned summoning order.

2. Heard learned counsel for the appellants, learned counsel for the opposite party no.2 as well as the learned A.G.A. for the State and perused the entire record.

3. The facts of this case, as unfolded in the F.I.R., are that on 15.5.2024 at about 6.00 a.m. the

named accused persons including the present appellants came to the field of the informant, who is a member of SC/ST community, and started beating the informant, Ashok Kumar and Virendra Kumar with the aid of lathi danda and hurled abuses by caste related remarks. F.I.R. was lodged and after thorough investigation charge sheet has been submitted. The trial court after perusing the evidence available in the case diary took cognizance of the matter and the appellants were summoned to face trial under Sections 323, 504, 506 IPC and 3(1)(da), 3(1)(dha) the SC/ST Act.

4. It is submitted by the learned counsel for the appellants that appellants are innocent and have been falsely implicated in this case. The present prosecution has been instituted with a malafide intention. The entire prosecution story is false and fabricated. There are contradictions in the statements of the informant and that of the witnesses recorded before the Investigating Officer under Section 161 CrPC. No specific role has been assigned to the appellants. The police has also submitted charge sheet on the basis of insufficient evidence against the appellants. Essential ingredients to constitute the alleged offences are lacking. Learned counsel for the appellants pointed out certain documents and statements in support of his contention.

5. 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 the incident took place in any place within the public view and 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/informant being a member of SC/ST community. It is also submitted that the appellants never hurled abuses to insult him by caste related remarks. The impugned order suffers from infirmity and illegality warranting interference by this Court. It is lastly submitted that present case has also a cross case wherein charge sheet has been submitted.

6. Per contra, the learned counsel for the opposite party no.2 as well as the learned AGA opposed the appeal and submitted 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 concerned after applying its judicial mind has passed the cognizance and summoning order on the basis of sufficient evidence on record. There is no infirmity or illegality in the impugned order warranting interference by this Court. 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. 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.

10. So far as the case in hand is concerned, the prosecution claims that the accused appellants hurled abuses to the informant with caste related remarks and also made assault upon him and his associates. The witnesses of this case including the informant have affirmed this fact when they were interrogated by the I.O. under Section 161 CrPC. Further, evidence collected by the I.O. prima facie shows that the offence has been committed with the informant, who is a member of the SC/ST community whereas the appellants are not members of SC/ST community and accused appellants were very well knowing that the informant / injured is a member of SC/ST community. Hence, all the offences for which cognizance in this case was taken by the Court concerned are prima facie made out on the basis of evidence collected by the Investigating Officer.

11. As is evident, all the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in this appeal. At this stage only a prima facie case is to be seen in the light of the settled law, as discussed here-in-above. From a perusal of the material available on record and keeping in view the facts of the case, at this stage it cannot be said that offences levelled against the appellants are not made out and the record shows that a cognizable offence is clearly made out against the appellants. Sufficient evidence has been collected against the appellants during the course of investigation. Further, since the present case has also a cross case and after collecting ample evidence the Court concerned has taken cognizance on the charge sheet submitted by the I.O., there is no justification to quash the charge sheet or to set aside the cognizance / summoning order. The Court concerned did not err in taking cognizance into the matter and thereby to summon the accused / appellants to face trial for the offences made out prima facie. There is no force in the submissions made by the learned counsel for the appellants. The impugned order does not suffer from illegality, infirmity, perversity or lack of judicial mind. 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 :- 30.4.2025 safi