Tilakram vs State Of U.P. And Another on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67671

Court No. - 80

Case :- CRIMINAL APPEAL No. - 10168 of 2024

Appellant :- Tilakram

Respondent :- State of U.P. and Another

Counsel for Appellant :- Krishna Gopal

Counsel for Respondent :- G.A.,Rahul Saxena

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 - Tilakram with the prayer to set-aside the quash /set aside the cognizance / summoning order dated 6.8.2024 passed by the Special Judge (SC/ST Act), Bareilly and the entire proceedings of Criminal Case No. 1553 of 2024, arising out of case crime no. 475 of 2023, under Sections 500, 504, 506 IPC and 3(1)(da), 3(1)(dha), 3(2)(va) the SC/ST Act, P.S. Bhuta, District Bareilly. 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 appellant, 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. As per the factual matrix of this case, it is alleged in the F.I.R. that on 17.9.2023 at 10.30 p.m. the name of the niece of the informant was called on loudspeaker by Tilakram, the appellant with bad intention and when it was protested by the informant, the father of the appellant insulted the informant, who was a member of SC/ST community, by hurling abuses with caste related remarks and threatened for dire consequences. 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 appellant was summoned to face trial under Sections 500, 504,

506 IPC and 3(1)(da), 3(1)(dha), 3(2)(va) of the SC/ST Act.

4. It is submitted by the learned counsel for the appellant that appellant is innocent and has 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. The police has also submitted charge sheet on the basis of insufficient evidence against the appellant. Essential ingredients to constitute the alleged offences are lacking. It is also submitted that the offence under Section 500 IPC never comes into picture on the basis of the contents of the F.I.R. as well as the statements of the witnesses of this case. Learned counsel for the appellant pointed out certain documents and statements in support of his contention.

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/informant being a member of SC/ST community. It is also submitted that the appellant never hurled abuses to insult him by caste related remarks. The impugned order suffers from infirmity and illegality warranting interference by this Court.

6. Per contra, the learned counsel for the opposite party no.2 as well as the learned AGA opposed the appeal and submitted that the appellant never denied the incident and in the entire affidavit there is no such averment that the alleged incident did not happen at all. It is further 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 appellant hurled abuses to the informant with caste related remarks and also made assault upon him on a public place with a criminal intent to insult him. 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 appellant is not member of SC/ST community and accused appellant was very well knowing that the informant / injured is a member of SC/ST community. However, I find force in the contention made by the learned counsel for the appellant that no offence under Section 500 IPC is made out. Hence, all the offences, except offence under Section 500 IPC, 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 appellant, except offence under Section 500 IPC, are not made out and the record shows that a cognizable offence is clearly made out against the appellant. Sufficient evidence has been collected against the appellant during the course of investigation. 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 under Sections 504, 506 IPC and 3(1)(da), 3(1)(dha), 3(2)(va) the SC/ST Act prima facie made out. There is some force in the submissions made by the learned counsel for the appellant. The impugned order so far as it relates to the offence under Section 500 IPC is liable to be set aside but for other offences it does not suffer from illegality, infirmity, perversity or lack of judicial mind. Hence, the impugned order to the extent of offence under Section 500 IPC against the appellant is set-aside and for the other offences it is affirmed and the criminal appeal is partly allowed.

Order Date :- 30.4.2025/safi