

Neutral Citation No. - 2023:AHC-LKO:59043

Court No. - 15

Case :- CRIMINAL APPEAL No. - 2620 of 2023

Appellant :- Urmila Singh Chauhan

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow
And Another

Counsel for Appellant :- Kirti Prakash Singh, Karan Veer
Singh

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed, J.

Heard.

The present appeal has been filed with a prayer to allow the appeal as well as to set aside the judgement and order dated 22.08.2023 passed by the learned Special Judge, S.C./S.T. Act, Lucknow in F.I.R. No.69 of 2021, under Sections 323, 504, 506 I.P.C. and Section 3(1)(Da)(Dha) of S.C./S.T. Act, Police Station Krishna Nagar, District Lucknow.

The prosecution case in brief is that the informant was asked to vacate the house in which he was living on rent of Rs.5,000/- per month. The informant received the order for vacation from the officer concerned. As per the order, one third portion was allotted to the appellant, wherein she was living with her family. Another one third portion was grabbed by the appellant illegally. The complainant asked the appellant to pay the amount of Rs.7,02,000/- through a legal notice, however, the appellant abused the complainant with caste abusive languages. On the date of incident, when the complainant was watering the plants, the accused persons started assaulting the complainant as well as his wife and had abused them in caste abusive languages.

As per the affidavit filed in support of the appeal, the contention of the appellant is that the entire prosecution story is false and fabricated. No case under the Sections of 3(1)(Da)(Dha) of S.C./S.T. Act is attracted against the appellant. As per the averment made in the affidavit, the incident is alleged to have taken place inside the house i.e. inside the boundary wall of house and garden, which is neither a public place nor there was any public view and the instant appellant was not present at the time of the alleged incident. It has also been contended that even the offence under the provisions of I.P.C. is also not

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attracted against the appellant as there is no injury found on the person of the victim and even medical report is also not available. Thus, the entire prosecution story appears to be false and lodged with malafide intention to implicate the entire family of the appellant, who is a lady.

Her further averment is that by means of the impugned order dated 22.08.2023, the application seeking anticipatory bail by the present appellant came to be rejected by learned trial Court on the ground that entertaining such application for anticipatory bail is specifically barred and excluded by virtue of Section 18 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Act, 1989').

Being germane to the present controversy, Section 18 of SC/ST Act is quoted herein below :

"18. Section 438 of the Code not to apply to persons committing an offence under the Act.?Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

Her further averment is that the aforesaid impugned order dated 22.08.2023 is patently illegal insofar as the same has been passed without considering the law laid down by Hon'ble the Apex Court in **Prathvi Raj Chauhan Vs. Union of India and Other; (2020) 4 SCC 727** and judgment rendered by a Division Bench of this Court in the case of **Gopal Mishra Vs. State of U.P. and Others; Criminal Misc. Writ Petition No.16343 of 2020**. Her further averment is that the incident does not took place in the public view and public place, therefore, she may be given benefit of judgment rendered by the Hon'ble Supreme Court in the case of **Hitesh Verma Vs. State of Uttarakhand, (2020) 10 SCC 710**, wherein in para 13 and 18, Hon'ble the Supreme Court has opined as under:-

"13. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste."

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18. Therefore, offence under the Act is not established merely on the fact that the informant is a member of Scheduled Caste unless there is an intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. In the present case, the parties are litigating over possession of the land. The allegation of hurling of abuses is against a person who claims title over the property. If such person happens to be a Scheduled Caste, the offence under Section 3(1)(r) of the Act is not made out."

On the basis of above, it is further averred that denial of anticipatory bail on the basis of bar contained in Section 18 of Act, 1989 is not sustainable. Therefore, the appellant is entitled for anticipatory bail.

Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that Section 18 of SC/ST Act provides specific bar, in order to prevent and protect atrocities being committed in respect of members belonging to SC/ST Community. Therefore, such enactment should be construed strictly and in this view of the matter, no fault with the impugned order can be found.

Considering the averments made in the affidavit filed in support of the appeal as well as submissions made by learned A.G.A. for the State and going through the contents of the impugned order passed by the trial court dated 22.08.2023 and the contents of the F.I.R., as the alleged incident took place inside the house of the complainant and not in the public place nor there was any public view, thus, no question arose that there is any public humiliation caused to the appellant for lodging the case under Section 3(1)(Da)(Dha) of S.C./S.T. Act and even there is nothing to show that other Sections of the I.P.C. are also attracted in the case of the appellant and also considering the Section 18 of the Act, 1989 which provides that there is a bar to grant anticipatory bail as well as considering the law laid down by Hon'ble the Apex Court in the case of **Prathvi Raj Chauhan (Supra)** and judgment rendered by a Division Bench of this Court in the case of **Gopal Mishra (Supra)** and further considering the Article 21 of the Constitution of India and the law laid down by the Hon'ble Apex Court in the case of **Dataram Singh vs. State of UP and another**, reported in **(2018) 3 SCC 22** and **Hitesh Verma (Supra)**, this Court is of the view that the learned court below has failed to appreciate the material available on record. The order passed by the court below is liable to be set aside.

Accordingly, the appeal is **allowed**. Consequently, the impugned judgment and order dated 22.08.2023 passed by the learned Special Judge, S.C./S.T. Act, Lucknow in F.I.R. No.69 of 2021, under Sections 323, 504, 506 I.P.C. and Section 3(1)

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(Da)(Dha) of S.C./S.T. Act, Police Station Krishna Nagar, District Lucknow rejecting the anticipatory bail of the appellant, is hereby **set aside** and **reversed**.

It is directed that in the event of arrest of the appellant, namely, **Urmila Singh Chauhan** in F.I.R. No.69 of 2021, under Sections 323, 504, 506 I.P.C. and Section 3(1)(Da)(Dha) of S.C./S.T. Act, Police Station Krishna Nagar, District Lucknow, she shall be released forthwith by the Station House Officer of the police station concerned, on her furnishing a personal bond of Rs.50,000/- with the following condition:-

(i) That the accused-appellant shall make herself available for interrogation by police authorities as and when required and will cooperate with the investigation;

(ii) That the accused-appellant shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or to any police officer; and

(iii) That the accused-appellant shall not leave India without the previous permission of the Court.

It is made clear that the observation made herein above are only confined to the disposal of the instant criminal appeal i.e. anticipatory bail application only and has no effect on the ultimate merit of the case.

Order Date :- 14.9.2023

Saurabh