
(2013) 06 AHC CK 0065
In the Allahabad High Court

Sathish Yadav and Anr.

APPELLANT

Vs

State of U.P and Anr.

RESPONDENT

Date of Decision : 26-06-2013

Acts Referred:

Citation : (2013) 06 AHC CK 0065

Hon'ble Judges : Vishnu Chandra Gupta, J

Final Decision : Dismissed

Judgement

Vishnu Chandra Gupta, J.

Heard learned counsel for the petitioners and learned A.G.A. for the State.

By means of this petition under Section 482 Cr.P.C. the petitioners have assailed the order under Section 319 Cr.P.C. summoning the applicants passed by Additional District & Session Judge/T.E.C.P. Court No. 2, Lucknow in Sessions Trial No. 51 of 2010, arising out of Case Crime No. 121/2004, under Sections 147/148/452/504/506/427 I.P.C. and 3(1)X SC/ST Act, Police Station Mall, District Lucknow.

The order impugned has been assailed on the following grounds :

I. That, there is no specific allegation against the applicant for participating in the crime.

II. That, incident took place inside the house and not at public place, hence offence under Section 3(1)X SC/ST Act is not made out.

III. That, the court has not has not assigned the reasons in support of his order.

The statement of Rampati recorded on oath during trial is the basis on which alleged order has been passed which is annexed as Annexure 6 to this petition.

The statement of Smt. Rampati Raidas informant clearly shows that Indrapal Ramlal, Fatte, Rajpal, Satish (Petitioner No. 1) and Ramlakhan(petitioner No. 2)

came to the house of the complainant, assaulted her and uttered the words to daughter-in-law of the informant "Sali Chamarin teri Shas or tera Admi kaha gaya." It was also stated that at the time of incident hearing noise chaukidar Kadhile and other persons came on the spot, intervened and saved her life. It is not in dispute that the applicant was also named by the informant in the First Information Report. Specific averment has been made against the applicants in statement on oath, hence there is no merit so far as point no. 1 is concerned.

Section 3(1)X of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC/ST Act") provides that if any person not being a member of scheduled castes or scheduled tribes intentionally insults or intimates with intent to humiliate a member of scheduled castes or scheduled tribes in any place within public view, the necessary ingredients of Section 3(1)X would be applied. In this case no doubt that incident said to have been taken place inside the house but it is also evident from the statement of the witnesses that several persons entered into house and saved the informant's life. So, prima facie, at this stage it cannot be inferred that the incident was not taken place within the public view. Hence, I do not find any merit so far as point no. 2 is concerned.

The learned Court below has opined that on the basis of F.I.R. G.D., case diary, chargesheet and statement of PW.1 Ramapati given on oath shows that accused Satish and Ram Lakhan alongwith other coaccused were involved in the commission of crime and they were summoned u/s 319 Cr.P.C. as to sufficient material is available on record. It was further observed by the court that on trial there is every possibility of their conviction.

It is true that the word "evidence" used under Section 319 Cr.P.C. does not include the statement recorded under Section 161 Cr.P.C. or the material available in the case diary.

Only the evidence which has been adduced during trial would be considered for use of Section 319 Cr.P.C. It is also true that Court has to ascertain whether if the uncontroverted evidence adduced during trial for summoning the accused under Section 319 Cr.P.C. would resultant into conviction of the accused.

Now, the question comes whether this order can be sustained on the basis of reasons assigned by learned Court below. It is well settled principle of law that if the finding is based on the material which could not be considered for recording the findings and also on the basis of material which could be considered, the Higher Court shall ascertain whether the findings recorded by the Court would be sustained after excluding the material which could not be considered for recording the findings? If answer is positive, the finding cannot be disturbed or interfered with.

I find that even if the F.I.R., G.D., case diary and chargesheet is excluded from consideration, even then, the statement of PW.1 would be there which could be used for passing the impugned order. I have discussed about the statement of

PW.1, which in the opinion of this Court is sufficient to involve these persons in the commission of crime alongwith coaccused, hence on this ground the order cannot be set aside or interfered with whether unreverted evidence would be sufficient for recording evidence of the persons is concerned, the finding has been recorded by the trial court. The same has not been happily worded but cannot be said to be perverse. Therefore, I do not find any sufficient reason for interference in the impugned order.

Hence, the petition is dismissed. However, it is provided that finding recorded by this Court while deciding this petition shall not have binding force upon the trial and cannot be used as finding recorded by this Court for the purpose of trial.

It is also provided that if petitioners, namely, Satish Yadav and Ram Lakhan Yadav surrender before the court below within two weeks from today and move bail application, the same shall be considered and disposed of expeditiously in accordance with law and also keeping in view the directions contained in the judgement delivered by the Apex Court reported in 2009 (3) ADJ 322 (SC) (Lal Kamendra Pratap Singh Vs. State of U.P.).

For two weeks or till the date of surrender, whichever is earlier, no coercive steps shall be taken against the petitioners.