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**IN THE HIGH COURT OF MADHYA PRADESH
AT J A B A L P U R
BEFORE**

JUSTICE ACHAL KUMAR PALIWAL

CRIMINAL APPEAL No. 419 of 2012

DHAN SINGH CHOUDHARY
Versus
THE STATE OF MADHYA PRADESH

Appearance

Shri Vidya Prasad –Advocate for the appellent.

Shri Satya Pal Chadar – Government Advocate for the respondent/State.

Reserved on : 20.08.2024

Pronounced on : 23.08.2024

This criminal appeal having been heard and reserved for judgment, coming on for pronouncement this day, Justice Achal Kumar Paliwal pronounced the following:

J U D G M E N T

This is an appeal filed under Section 341 of the Code of Criminal Procedure, 1973 (In short “Cr.P.C.”) against the judgment dated 31.01.2012 passed in S.C. No.7/2010 by Special Sessions Judge, SC/ST (PA) Act, Damoh, assailing findings recorded by the trial court in impugned judgment, especially in para 30, wherein trial Court has directed that appellent be prosecuted under Section 193 of IPC and Section 211 of Cr.P.C.

2. Brief facts relevant for disposal of present appeal are that present appellant filed a written application before Principal, Government Higher Secondary School, Khaderi, Damoh and lodged FIR (Ex. P/3) against one Ram Prasad Patel under Sections 186, 294, 506 of IPC and Section 3(1)(x) of SC/ST (POA) Act. After investigation, charge sheet was filed against Ram Prasad Patel under aforesaid Sections, thereafter trial Court framed charges against Ram Prasad Patel Under Sections 294, 506-II and 186 of IPC and Section 3(1)(x) of SC/ST (POA) Act. After recording of prosecution evidence etc. and examination of accused Ram Prasad Patel under Section 313 of Cr.P.C. Court passed judgment on 31.01.2012 and acquitted Ram Prasad Patel of aforesaid offence. But trial Court directed initiation of proceedings under Section 193 of IPC and Section 211 of Cr.P.C., against which present appeal has been filed by appellant Dhansingh Choudhary.

3. Learned counsel for the appellant submits that findings recorded by the trial Court in para 25 to 30, especially para 30, are illegal. Learned trial court has committed error and illegality in directing that appellant be prosecuted for offence under Section 193 of IPC and Section 211 of Cr.P.C. Therefore, appeal filed by the appellant be allowed and above findings recorded by the trial Court be set aside.

4. Learned Government Advocate has submitted that learned trial Court has properly appreciated the evidence on record. Learned trial Court has not committed any illegality in directing initiation of proceedings under Section 193 of IPC and Section 211 of Cr.P.C. against appellant. Therefore, appellant's appeal be dismissed.

5. I have heard learned counsel for the parties and perused record of the trial Court.

6. Perusal of record of the case, especially impugned judgment, reveals that therein trial Court directed that complaint be filed against complainant Dhan Singh Choudhary (appellant) under Section 193 of IPC in the Court of Chief Judicial Magistrate. Court, further, directed concerned in-charge police station to proceed in accordance with Section 211 of Cr.P.C.

7. Perusal of deposition of appellant/complainant Dhan Singh Choudhary reveals that he has partially deposed as per FIR (Ex. P/3) lodged by him/application Ex. P/2 but this witness has also turned hostile. Further, witness also admitted his signature on FIR (Ex. P/3) and deposed that he has lodged above FIR against accused Ram Prasad Patel. He also admitted his signature on application (Ex. P/2).

8. Thus, it is evident from deposition of Dhan Singh Choudhary that he has not completely denied from the incident. It appears from record of the case that as compromise took place between the parties, therefore, appellant/complainant Dhan Singh Choudhary turned hostile and did not completely support the prosecution story.

9. Hence, in view of above facts and circumstances of the case, in this Court opinion, it would not be expedient in the interest of justice to prosecute appellant/complainant for offence under Section 193 of IPC as well as under Section 211 of Cr.P.C..

10. Hence, Appeal filed by the appellant is allowed and findings recorded by the trial Court in para 25 onwards, especially in para 30 are set aside.

11. Appeal filed by the appellant is allowed and disposed of accordingly.

(ACHAL KUMAR PALIWAL)
JUDGE

L.R.