

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal No. 399/2023

1. Niraj Goyal
2. Deepesh Bhatnagar

----Appellants

Versus

1. State Of Rajasthan, Through PP
2. Anand Kumar Bhati

----Respondents

For Appellant(s) : Mr. S.S. Ladrecha
Mr. Devendra Singh Pidiyar
For Respondent(s) : Mr. Gourav Singh, PP

HON'BLE MR. JUSTICE FARJAND ALI

Order

13/04/2023

By way of filing the instant criminal appeal, challenge has been made to the order dated 21.02.2023 passed by Special Judge, SC/ST Case and Additional District & Session Judge, Bikaner in Final Report CIS No.63/2020 (F.I.R. No.269/2015, Police Station JNVC, Bikaner) whereby the learned trial Court allowed the protest petition filed by the complainant-respondent, took cognizance of the offence and issued process against the petitioner for offence under Sections 3(1)(r), 3(1)(s) of the SC/ST Act.

Shri S.S. Ladrecha, learned counsel for the appellant submits that a false case has been foisted against the appellants with a view to spite and harass them. The matter was thoroughly

investigated by the Police and thereafter, a negative final report got submitted in which several reasons were assigned by the Investigating Officer. However, learned Court below has not discussed the grounds on which negative final report was submitted. He further submits that it is well-nigh settled that when a negative final report is submitted and protest is made at the behest of the complainant, it is incumbent upon the Magistrate/ trial Judge to consider/discuss the grounds enumerated in the final report and the disagreement with the conclusion of the Investigating Officer has to be mentioned in clear terms in the order before taking cognizance of the offence. Having not done so, the learned Court below has committed a grave error of law. It is further submitted that there is no evidence from which it can be inferred that the appellant knew the caste of the victim and this act was done intentionally to humiliate and intimidate the victim. In absence of the intent or the ingredients which are essential to constitute an offence, the order of taking cognizance is bad in law and the same may be quashed and set aside.

Per contra, Shri Gourav Singh, learned Public Prosecutor, made protest to the submissions made at the instance of the appellant while contending that the order impugned is a reasoned and speaking order which requires no interference of this Court by exercising appellate jurisdiction.

Heard learned counsel for the parties and perused the material available on record.

It is not in dispute that two matters were reported to the Police, one from the side of the appellant and other from the

complainant side. After registration of the F.I.R., the matter was thoroughly investigated by a superior Officer and a detailed negative report got submitted. In a case where a detailed negative final report is submitted, it becomes imperative upon the Judicial Officer to show his disagreement with the conclusion of the Investigating Officer and it should be mentioned in clear terms in the order that why he was not agreeable with the result of the investigation. This is to be done before taking cognizance of the offence and issuance of the process.

A bare perusal of the order does not reflecting fulfillment of the legal obligation and thus, in considered view of this Court, the order impugned is not sustainable in the eye of law, therefore, the appeal deserves to be allowed.

Accordingly, the appeal is allowed.

The matter is remanded back to the learned trial Court to pass a fresh order, after making discussion on the result of investigation and consideration of the entire material available on record and before taking cognizance of the offence, the learned trial Judge would have to convince whether the ingredients essential to constitute the alleged offences are available on record or not.

The stay petition also stands disposed of.

(FARJAND ALI),J