

Court No. - 13

Case :- U/S 482/378/407 No. - 4542 of 2011

Applicant :- Smt. Nepali Devi

Opposite Party :- The State Of U.P And Ors.

Counsel for Applicant :- Amar Nath Dubey

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Dinesh Kumar Singh,J.

1. This petition under Section 482 Cr.P.C. has been filed challenging order dated 17.09.2011 passed by the Additional District and Sessions Judge (Ex-cadre), Court No.7, Pratapgarh in Sessions Trial No.221 of 2011 arising out of Case Crime No.377 of 2004 under Sections 323, 504, 506, 427, 452, 436 IPC, Police Station Lalganj, District Pratapgarh whereby charges against the accused have been framed under Sections 147, 323/149, 452, 504, 506 IPC.

2. Sri Amar Nath Dubey, learned counsel for the petitioner submits that the material and evidence available with the charge-sheet clearly disclose the offence under Section 436 I.P.C., however, learned Sessions Judge has not framed charge under Section 436 IPC on the incorrect ground that there was no allegation either in the FIR or in the statement of the complainant recorded under Section 161 Cr.P.C. to allege that accused used fire or explosive substance to put on fire the residential property of the complainant or other person. He, therefore, submits that though there is no allegation of putting the thatch on fire, however, in 161 Cr.P.C. statement the complainant has said that the accused has put the house of Ramadhar on fire, therefore, it was incorrect on the part of the learned Sessions Judge to say that after considering the statement under Section 161 Cr.P.C., offence under Section 436 IPC *prima facie* is not made out.

3. It is correct that there is no allegation of putting on fire the residential premises of the complainant or Ramadhar though the complainant in her statement under Section 161 Cr.P.C. has said that the miscreants/accused have put on fire the thatch of Ramadhar. Ramadhar's statement is not on record whose house is alleged to have been put on fire by the accused. However, at the stage of framing of charge, learned Judge is required to evaluate the evidence to find out *prima facie* case but he is not required to go in detail every statement or every evidence which has been collected by the Investigating Officer. Learned Sessions Judge after considering the version of the FIR and the statement of the other witnesses including the complainant was *prima facie* of the opinion that offence under Section 436 IPC is not made out. If the complainant or the prosecution is of the view, during the course of trial, that some other offence(s) has/have also been committed by the accused, it is always open to him/her to file an application under Section 216 Cr.P.C. to alter the charge(s).

4. Therefore, this petition is ***disposed of*** with liberty to the petitioner to move an application at an appropriate stage if there is any other evidence than for which the charges have been framed vide order dated 17.09.2011 for altering the charge against the accused and, if such an application is filed, the trial Court should deal with the application in accordance with law.

Order Date :- 30.10.2019

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