

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 15077 of 2013

Arising Out of PS.Case No. -163 Year- 2009 Thana –SC/SC PS District- GOPALGANJ

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1. Rajesh Yadav Son of Ramashankar Yadav Resident of Village-Deurawa (Gopalpur Tola), Police Station- Bhorey, District- Gopalganj.
 2. Ramashankar Yadav Son of Late Bishuni Yadav Resident of Village-Deurawa (Gopalpur Tola), Police Station- Bhorey, District- Gopalganj.
- Petitioner/s

Versus

1. The State of Bihar
 2. Ram Das Ram, Son of Vikrama Ram, Resident of Village- Deurawan, Police Station- Bhorey, District- Gopalganj.
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Baxi S.R.P. Sinha, Sr. Advocate
Mr. Lokesh Kumar Singh, Advocate.

For the State : Mr. Bhanu Pratap Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

4 09-07-2015 Heard Mr. Baxi S.R.P. Sinha, learned senior counsel assisted by Mr. Lokesh Kumar Singh, learned counsel for the petitioners and learned A.P.P. for the State.

Despite notice having been validly served on the opposite party no. 2 (informant), nobody is present when the case is taken up.

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the order taking cognizance dated 04.03.2013 passed by the learned Chief Judicial Magistrate, Gopalganj in G.R. Case No. 886 of 2009 arising out of Hajipur (S.C./S.T.) P.S. Case No. 163 of 2009 by which besides taking cognizance under various Sections of the Indian Penal Code cognizance

has also been taken under Section 3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the S.C. and S.T. Act).

Learned counsel for the petitioners submits that as per the F.I.R. itself, no offence is made out under the aforesaid section of the S.C. and S.T. Act which clearly stipulates that any insult or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe has to occur in any place within public view. In the present case as per the fardbeyan itself, the incident took place in the 'Bathan' of the informant at 9.00 P.M. in the village. There is no allegation that there was any other person there much less any public.

Learned A.P.P. is not able to counter the submission of learned counsel for the petitioner with regard to the incident not having taken place in public view.

After hearing learned counsel for the parties, it is obvious that as per the allegation made in the fardbeyan itself though the incident has taken place outside the house but not in public view moreso since it was a 'Bathan' and the place of occurrence alleged is in the village and the time is 9.00 P.M. The law being well settled that a strict penal law as the S.C. and S.T. Act is requires strict confirmation to the ingredients as has been specified in the Act so as to make a person liable to punishment under such provisions of S.C. and

S.T. Act. In the present case, from the plain reading of Section 3(1)(x) and comparing with the allegation made in the fardbeyan, this Court is left with no doubt that no offence is made out under such Section of S.C. and S.T. Act and thus taking of cognizance by the Court below under such section appears to be untenable.

Accordingly, the application succeeds. The order taking cognizance under Section 3(1)(x) of the S.C. and S.T. Act by the learned Chief Judicial Magistrate, Gopalganj in G.R. Case No. 886 of 2009 arising out of Hajipur (S.C./S.T.) P.S. Case No. 163 of 2009 stands quashed. However, the petitioners shall be liable to face trial under the other sections of the Indian Penal Code under which cognizance has also been taken.

(Ahsanuddin Amanullah, J.)

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