

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31380 of 2014

Arising Out of PS.Case No. -92 Year- 2011 Thana -TRIVENIGANJ District- SUPAUL

- =====
1. Sunil Yadav @ Sunil Kumar Yadav
 2. Mritunjay Yadav @ Mirtunjay Kumar, both sons of Preet Narayan Yadav
 3. Jagdish Yadav, son of Khattar Yadav
 4. Shiv Narayan Yadav, son of Raj Kumar Yadav
 5. Nunulal Yadav, son of Domi Yadav
 6. Arjun Yadav, son of Mahabir Yadav
 7. Lalan Yadav, son of Ramdeo Yadav, all residents of village- Lachhaminian, P.S. Tribeniganj, District-Supaul.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Neeraj Kumar Alias Sanidh -Advocate

For the Opposite Party/s : Mr. Ram Shankar Das (A.P.P)

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 22-09-2016

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor.

Learned counsel for the petitioners seeks permission to correct the Paragraph-1 of the petition in course of the day and the same is allowed.

It has been submitted on behalf of petitioners that though by the order impugned, the learned lower Court had rejected the prayer of the petitioners for discharge, but wrongly and illegally held that a case punishable under Section 323, 342, 504/34 of the I.P.C. along with Section 3(1)(x) of the S.C./S.T. (Prevention of Atrocities) Act is made out. To substantiate such



plea, it has been submitted that there happens to be specific disclosure that accused persons have abused the Mukhiya by her caste name and so, it was the Mukhiya, who was an aggrieved and having her absence as is itself evident, no one could be aggrieved whereupon could be allowed to replace the Mukhiya on that very score, and so, Section 3(1)(x) of the S.C./S.T. (Prevention of Atrocities) Act is not at all made out. To substantiate such plea, the learned counsel for the petitioners also relied upon ***Asmathunnisa v. State of A. P. reported in 2011 CRI. L. J. 2594*** whereunder it has been observed that in absence of so called aggrieved, no prosecution under Section 3(1)(x) of the S.C./S.T. (Prevention of Atrocities) Act is permissible.

Mere rejection of prayer under Section 227 of the Cr.P.C. would not exclude the Court from exercising its power while proceeding ahead under Section 228 of the Cr.P.C., because of the fact that Section 228 of the Cr.P.C. itself speak that at the time of framing of charge, the Court has to see whether the offence, which are coming out from the materials available on the record is exclusively triable by the Court of Sessions? If not, then in terms of Section 228(A) of the Cr.P.C., the Court will frame charge and remit the matter to the learned lower Court contrary to it, the learned lower Court will proceed ahead after framing of

charge in terms of Section 228(B) of the Cr.P.C.

That being so, during course of consideration in terms of Section 228 of the Cr.P.C. the learned lower Court will see whether there happens to be applicability of Section 3(1)(x) of the S.C./S.T. (Prevention of Atrocities) Act, more particularly in the background of principle enunciated by the Hon’ble Apex Court in *Asmathunnisa case* (supra).

With the aforesaid observation, instant petition is disposed of.

(Aditya Kumar Trivedi, J)

Vikash/-

U		T	
---	--	---	--