

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.758 of 2016

Arising out of Complaint Case No. -23 C Year- 2016 Thana -SHEKHPURA COMPLAINT CASE
District- SEKHPURA

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Awadhesh Kumar Sinha, son of late Basudeo Sinha, resident of village Girhinda Professor Colony, Ward No. 19, Police Station Sheikhpura, Distt. Sheikhpura at present Head Clerk Nagar Parishad Sheikhpura, Distt. Sheikhpura.

.... Appellant

Versus

1. The State of Bihar
2. Shanti Devi, wife of Parmeshwar Das, resident of Mohalla Mahadev Nagar, P.S. Sheikhpura, Distt. Sheikhpura.

.... Respondents

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Appearance :

For the Appellant : Mr. Zeyaul Hoda, Advocate.

For the State : Mr. Syed Ashfaq Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-10-2016

Heard Mr. Zeyaul Hoda, learned counsel for the appellant and Mr. Syed Ashfaq Ahmad, learned Additional Public Prosecutor for the State.

2. This appeal under Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') has been filed against the order dated



9.9.2016 passed by the learned 1st Additional District and Sessions judge, Sheikhpura, in Complaint Case No. 23C of 2016 by which the learned 1st Additional Sessions Judge-cum-Special Court has rejected the application for grant of pre-arrest bail of the appellant in a case in which cognizance of the offence was taken on 15.2.2016 by the learned Additional Chief Judicial Magistrate-I, Sheikhpura, under Sections 323, 341, 504, 506, 379/34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. (for short 'the Act').

3. It has been submitted by the learned counsel for the appellant that the appellant has been framed illegally by the complainant in a case in which the ingredients of the offence punishable under Section 3(1) (x) of the Act are not attracted.

4. Referring to the statement of the complainant recorded on oath, it has been submitted by the learned counsel for the appellant that the complainant has not even alleged in her statement that she is a member of a Scheduled Caste or Scheduled Tribe community. In absence of the disclosure by the complainant regarding her caste, the submission is that the ingredients of Section 3 (1) (x) of the Act would not be attracted. In this regard, he has placed reliance on the Judgment of the Supreme Court in a case of **Gorige Pentaiah Vrs. the State of Andhra Pradesh and Ors., reported in**

(2008) 12 SCC 531. It is also submitted that the impugned order dated 15.2.2016 passed by the learned Additional Chief Judicial Magistrate-I, Sheikhpura, is without jurisdiction, as the order was passed on 15.2.2016 after coming into force of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'the Amendment Act, 2015').

5. In support of his contention, learned counsel for the appellant has placed his reliance on a decision of this Court in **Suman Thakur @ Mirtunjay Vrs. the State of Bihar, since reported in 2016 (4) PLJR, 300**, wherein it has been held by this Court that from the date of coming into force the Amendment Act, 2015, the court of Magistrate not being a Special Court or Exclusive Special Court as defined under Section 2 (d) and 2 (bd) and within the meaning of Section 14 shall have no jurisdiction to entertain any application and take cognizance of offence under the Act.

6. *Per contra*, Mr. Syed Ashfaque Ahmad, learned Additional Public Prosecutor being assisted by Mr. Sadanand Paswan, learned Special Public Prosecutor for the State has submitted that though in the statement on oath, the complainant has not disclosed the name of her caste, but in the complaint petition she has clearly stated that she is a member of Scheduled Caste community. He has further contended that since the complaint was filed on

18.1.2016, it was the court of Magistrate, which had the jurisdiction to entertain a complaint. Thus, the subsequent order dated 15.2.2016 passed by the Magistrate summoning the appellant would not vitiate the cognizance order.

7. I have heard learned counsel for the parties. I find force in the submission of the learned counsel for the appellant. Apparently, cognizance of the offence under Section 3 (1) (x) of the Act was taken after amendment Act, 2015 came into force with effect from 26.1.2016.

8. In view of the ratio laid down by this Court in the matter of **Suman Thakur @ Mirtunjay Vrs. the State of Bihar (supra)**, the Magistrate was not having jurisdiction on 15.2.2016 to take cognizance of the offence under the Act.

9. In that view of the matter, the impugned order dated 9.9.2016 passed by the special court-cum- 1st Additional District and Sessions Judge, Sheikhpura, in connection with A.B.P. No. 399 of 2016 arising out of complaint case No. 23C of 2016 is set aside. In the event of arrest or surrender before the court below within six weeks from today, the appellant named above, is directed to be released on bail on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of 1st Additional District and Sessions Judge, Sheikhpura,

in A.B.P. No. 399 of 2016 arising out of complaint case No. 23C of 2016 subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

10. The appeal stands allowed.

(Ashwani Kumar Singh, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N/A
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