

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.1366 of 2016**

Arising Out of PS.Case No. -21 Year- 2016 Thana -HARIJAN District- PATNA

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1. Dr. Prem Prakash Gupta S/o Late Ram Laxman Gupta, Professor and Head of Department, Pharmacology, All India Institute of Medical Sciences, Patna resident of AIIMS residential Complex, P.S.- Khagaul, District- Patna.
  2. Dr. Girish Kumar Singh, S/o Professor R.V. Singh resident of Directors Bungalow, All India Institute of Medical Sciences, P.S. Khagaul, District- Patna.

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ramakant Shurma, Sr. Advocate  
Mr. Amit Srivastava, Advocate

For the Respondent/s : Mr. Binay Kumar Sinha, Special PP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**ORAL JUDGMENT**

**Date: 22-12-2016**

1. Heard learned counsel for the appellants as well as learned Special Public Prosecutor for the State.

2. This criminal appeal filed under section 14 (2) A of the SC/ST (Prevention of Atrocities) Amendment Act, 2015 has been preferred against the order dated 13.12.2016 passed by learned Special Judge SC/ST, Patna in ABP no. 7202/2016 by which and whereunder learned Special Judge refused to grant privilege of anticipatory bail to appellants on the ground that in view of section 18 of the SC/ST Act, petition under section 438 of the Cr.P.C was not maintainable.

3. SC/ST P.S. case no.21/2016 was registered against the appellants on 22.10.2016 for the offences punishable under sections 341, 323, 504 and 506/34 of the Indian Penal Code and section 3 (1) ( r ) ( s ) ( p ) ( q ), 3 (2) (va) of the SC/ST (Prevention of Atrocities) Act on the basis of written report given by the



informant Dr. Ajay Choudhary before the officer-in-charge of SC/ST police station, Patna. The informant claims in his written report that he had joined on the post of senior Resident in AIIMS, Patna on 6.3.2014 and got extension for near about three years but when his term was completed and he got selection in other service, he was in need of working certificate from the concerned officials and accordingly, he applied for grant of experience working certificate but he did not get the aforesaid certificate and in the meantime, on 30.7.2016, he got a letter in which it has been disclosed that he had already discharged from the post of senior resident and his service was not extended. Thereafter, he met the administrative officer who disclosed that the aforesaid letter had been issued by appellant no.1 who was head of the department. The informant went in the chamber of appellant no.1 on 1.8.2016 and requested him to withdraw the aforesaid letter but appellant no.1 abused him calling him Harijan and also gave threat to ruin his career. The informant admitted in his written report that at the time of the aforesaid incident, no other person except appellant no.1 and the informant was present there. Informant claims that appellant no.1 had been torturing him since long as he belongs to scheduled castes community. The informant further alleges in his written report that then he met appellant no.2 who was director of the concerned institution and appellant no.2 advised him to file a petition in the office. Thereafter, in pursuance of the aforesaid direction, he gave a petition in the concerned office but again, he did not get any certificate. Then on 24.9.2016, he gave a reminder mentioning all the aforesaid facts as well as disclosing this fact that he was being discriminated by the officials as he belongs to scheduled caste community.

4. On the basis of the aforesaid written report, the above stated case was registered. In the meantime, appellants approached learned Sessions Judge, Patna



for grant of anticipatory bail and learned Sessions Judge transferred the aforesaid petition to the court of learned Special Judge SC/ST, Patna who granted interim protection to appellants directing the investigating agency/ concerned agency, not to take coercive steps against appellants but the investigating agency, having defied the direction of the court, illegally arrested appellant no.2 and when appellant no.2 was produced before special Judge, he directed the Investigating officer to release appellant no.2 without any delay, though an undertaking was taken by the concerned court. However, learned Special Judge, having heard the parties, dismissed the petition filed under section 438 of the Cr.P.C on the ground as stated above.

5. Learned counsel for the appellants assailed the impugned order submitting that written report of the informant does not disclose any offence of the SC/ST (Prevention of Atrocities) Act because according to the prosecution case itself, appellant no.1 uttered the word Harijan in his private chamber and except the informant and appellant no.1, no one was present there at the time of occurrence. Submission on behalf of the appellants is that section 3 (i) (r) of the SC/ST (Prevention of Atrocities) (Amendment) Act, 2015 is not applicable in the present case because none of the ingredients of that section is found in the facts of the present case. Admittedly, the so-called incident took place in the respective chambers of appellants. It is further submitted that so far as other provisions of the SC/ST (Prevention of Atrocities) Act are concerned, the same are also not applicable in the present case. It is further submitted that so far as word Harijan is concerned, the same has not been defined in the SC/ST (Prevention of Atrocities) Act and even if it is assumed that word Harijan was uttered by the appellants, then also, no case under any provisions of the SC/ST Act is made out because offence under the aforesaid Act is made out when any act is committed against member of



scheduled castes and scheduled tribes which has duly been defined under clauses 24 and 25 of the Article 366 of the Constitution of India. It is further submitted that, no doubt, appellant no.2 was arrested by the Investigating officer but it is admitted case of the parties that learned Special Judge had granted interim protection to appellant no.2 but the Investigating officer, having violated the aforesaid direction of the court, arrested appellant no.2 and, therefore, the aforesaid act of the Investigating officer will not come under the definition of legal custody. It is further submitted that if it is found that first information report does not constitute any offence of the SC/ST (Prevention of Atrocities) Act, then in that circumstance, section 18 of the SC/ST Act does not come in the way of the court to exercise its power vested under section 438 of the Cr.P.C and, therefore, learned Special Judge committed an error while observing that petition filed on behalf of the appellants under section 438 of the Cr.P.C was hit by section 18 of the SC/ST Act.

6. On the other hand, learned Special Public Prosecutor appearing for the State vehemently opposed the prayer submitting that chambers of appellants were situated in hospital which was public place. So, even if appellants humiliated the informant in their respective chambers, then also, section 3 (i) (r) of the SC/ST (Prevention of Atrocities) (Amendment) Act, 2015 is applicable in the present case. It is further submitted by him that section 3 (i) (u) of the aforesaid Act is applicable in the present case because the aforesaid section says that whoever being not the member of scheduled castes or scheduled tribes by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill-will against members of scheduled castes or the scheduled tribes, then the aforesaid person is liable for punishment.



7. Having heard the parties, I have gone through the record. I find that the informant, himself, admitted in his written report that appellants had humiliated him calling Harijan in their respective chambers and not in public view. In my view, learned counsel for the appellants rightly submitted that word Harijan had not been uttered in full public view and, therefore, the question of humiliation of the informant does not arise and, therefore, I am of the opinion that application of section 3 (i) (r) of the SC/ST (Prevention of Atrocities) (Amendment) Act, 2015 appears to be doubtful. So far as section 3 (i) (u) of the aforesaid Act is concerned, the same is also not applicable in the facts of the present case because spirit of the aforesaid section is that there should be promotion of feelings of enmity, hatred or ill-will against member of scheduled castes or the scheduled tribes but in the present case, there is nothing in the written report to show that appellants promoted any ill-feeling against member of scheduled castes or the scheduled tribes community.

8. As I have stated above that the entire occurrence appears to have taken place inside the chambers of the appellants and not in the public view and, therefore, the application of offence of the SC/ST (Prevention of Atrocities) Act in the present case appears to be doubtful and when no offence of the SC/ST (Prevention of Atrocities) Act is made out from the very face of the written report, then in that situation section 18 of the SC/ST Act does not come in the way of the court to exercise power vested under section 438 of the Cr.P.C. So far as offences of Indian Penal Code are concerned, almost all offences are bailable in nature.

9. Considering the aforesaid facts and circumstances as well as on the basis of the aforesaid discussions, this criminal appeal is allowed and the impugned order dated 13.12.2016 passed by learned Special Judge SC/ST, Patna in ABP no. 7202/2016 is set aside.



10. Accordingly, it is ordered that in the event of arrest/ surrender within six weeks from the date of receipt of this order to the concerned court, let the appellants above named be released on bail on furnishing bail bonds of Rs 10,000/- each with two sureties of the like amount each to the satisfaction of the Special Judge SC/ST, Patna in SC/ST P.S. Case no. 21/2016 subject to condition as laid down under section 438(2) of the Cr.P.C.

**(Hemant Kumar Srivastava, J)**

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