

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43879 of 2016

Arising Out of PS.Case No. -26 Year- 2015 Thana -SC/ST District- SEKHPURA

- =====
1. Ram Parvesh Yadav Son of Ramjee Yadav
 2. Mantu Yadav @ Ritikesh Kumar, Son of Ram Parvesh Yadav
- Both resident of Mohalla Bangalipar, P.S. and District- Sheikhpura.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Fazal Rahman with
Mr. Anisur Rahman, Advocates

For the Opposite Party/s : Mr. Sadanand Paswan, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 04-10-2016

Heard learned counsel for the parties.

The petitioners seek pre-arrest bail in Sheikhpura (SC/ST) P.S. Case No. 26 of 2015 dated 21.11.2015 instituted under Sections 341/323/337/353/354/504/34 of the Indian Penal Code and 3 (r) (s) (w)(ii) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act').

The allegation against the petitioners is of assault and also use of abusive casteist language against the informant, who is a lady, belonging to the scheduled caste.

Learned counsel for the petitioners submits that the allegations do not come under the purview of the Act as abuse was not in public view and further the assault was not with regard to outraging the modesty of the informant and, thus, the present petition is maintainable under Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to 'Cr.P.C.').

Learned Special P.P. submits that as per the plain reading of the *fardbeyan*, the petitioners are accused of holding the hand and also assaulting the informant, which itself indicates that the informant was dishonoured and, thus, the same clearly constitutes an offence under the Act. It is further submitted that Section 18 of the Act clearly bars the applicability of Section 438 of the Cr.P.C. to any case involving the arrest of any person on an accusation of having committed an offence under the Act. It is submitted that as per the accusation in the *fardbeyan*, ingredients of offence under the Act are made out.

Having considered the facts and circumstances of the case, the Court finds substance in the objection of learned Special P.P. with regard to maintainability of the present application.

In view thereof, the application stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	NAFR
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