

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.660 of 2014

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1. Jago Sah Son of late Ramu Sah
2. Dasrath Sah son of Jago Sah
3. Girmal Sah alias Sirimal Sah
4. Sarwan Sah, Son of Jago Sah
5. Sudami Devi wife of Jago Sah
All resident of Village-Jagdishpur, P.S. Barari, District-Katihar

.... Petitioner/s

Versus

1. State of Bihar
2. Pramod Ram, Son of Late Nirсан Ram
Parmanent Resident of village-Shitalpur, P.S. Bidupur, District Vaishali,
presently residing at Village Jagdishpur P.S. Barari, District Katihar

... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha

For the Respondent/s : Mr. Sadanand Paswan(Spl.PP)

For the Opposite party : Mr. Pawan Kr. Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 15-12-2016 Heard learned counsel for the parties.

2. The petitioners are aggrieved by an order dated 26.03.2014 passed by learned Sessions Judge, Katihar in Criminal Revision No. 87 of 2013 preferred by the complainant/Opposite party No.2, whereby he has set aside an order dated 16.04.2013 passed by learned Judicial Magistrate Ist. Class, Katihar in C.A. No. 3324 of 2011 and has directed the learned Magistrate to pass an order afresh on the point of taking cognizance. It appears that the said complaint petition was filed for the offences punishable under various Sections of the Indian Penal Code and Section 3 (i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of



Atrocities) Act, 1989. Learned Judicial Magistrate Ist. Class, Katihar took cognizance of the offence punishable under Sections 323 and 504 of the Indian Penal Code and not under Sections 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The Opposite party No.2 challenged the said order by filing the criminal revision application being Criminal Revision No. 87 of 2013 in the Court of learned Sessions Judge, Katihar, which has been disposed of by the said impugned order, dated 23.06.2014. The petitioners have been arraigned accused in the said complaint case No. 3324 of 2011.

3. On reading of the said order, I find that the learned Sessions Judge has recorded that there being allegation of calling the complainant by his caste name and hurling abuses on him, learned Court below, while passing order taking cognizance ought to have been taken note of this aspect.

4. The order dated 26.03.2014 is being assailed mainly on two grounds. Firstly, before passing the said order, dated 26.03.2014, which is apparently prejudicial to their interest, no notice was issued to the petitioners. Secondly, it has been submitted that there is no allegation in the complaint petition nor there is any material in the statement recorded on solemn affirmation of the witness at the stage of enquiry that the



occurrence of calling the complainant by his castes name and hurling abuses had taken place within public view. He has submitted that even if the contents of the complaint petition and statements of solemn affirmation were taken to be true, no offence can be said to have been made out under Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. From the impugned order, I find that the learned Sessions Judge has not concluded that on the basis of the material on record offence under Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out. He has simply asked the Magistrate to consider certain facts available in the complaint petition and statements on solemn affirmation and pass an order afresh.

6 It is true that there is nothing to dispute the contention that no notice was given to the petitioners before passing of the order dated 26.03.2014, which is apparently prejudicial to their interest. If the order taking cognizance, which is apparent in favour of the accused to the extent it relates to offence under Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, was to be assailed by the complainant, the accused had right to be heard in criminal revision



proceeding.

7. I would have interfered with the order dated 26.03.2014 on this ground alone. However, I am not doing that in view of the fact that the matter has simply been remanded to the Magistrate for passing an order afresh after taking into account the facts as mentioned in the said impugned order, dated 26.03.2014.

8. There is no gainsaying that unless there is material or allegation to demonstrate that occurrence had taken place within public view, no offence can be said to be made out under Section 3(i) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thus, while not interfering with the impugned order, it is observed that the Magistrate while passing an order in compliance of the order of the learned Sessions Judge, dated 26.03.2014, shall keep this aspect in his mind and will not be swayed by the fact that earlier order taking cognizance has been set aside by the impugned order dated 26.03.2014 passed by the learned Sessions Judge.

9. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

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