

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.788 of 2016

Arising Out of PS.Case No. -11 Year- 2013 Thana -SC/ST PS District- DARBHANGA

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1. Shiv Prasad Yadav son of Dhukhaharan Yadav
 2. Ram Prasad Yadav son of Late Muneshwar Yadav
 Both resident of village Lalganj, PS Keoti Dist. Darbhanga

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Grish Chandra Jha, Advocate
 For the Respondent/s : Mr. Binay Krishna, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 15-12-2016

1. Heard learned counsel for the appellants as well as learned counsel for the respondent.

2. This criminal appeal filed under section 14 (A) of the SC/ST (Prevention of Atrocities) Amendment Act is preferred against the order dated 12.8.2016 passed by learned Sessions Judge, Darbhanga, Bihar in ABP no. 1052/2016. The learned Sessions Judge observed in the impugned order that in the light of observations given by Apex Court of this country in 2014 (3) SCC page 471 (Bachchu Das vs State of Bihar) as well as this court in the case of Babu Kumar @ Suresh Kumar vs. State of Bihar and also in view of section 18 of the SC/ST Act, petition under section 438 of the Cr.P.C was not maintainable.

3. Appellants have challenged the impugned order by filing this criminal appeal on various counts.

4. The informant lodged the present case against the appellants for the offences punishable under sections 341, 323, 386, 379 and 504/34 of the Indian Penal Code and section 3 (2) (VII) of the SC/ST (Prevention of Atrocities) Act



levelling allegation against the appellants that they were demanding Rs 50,000/- as extortion money from the informant and also abused him by calling his caste name.

5. Submission on behalf of the appellants is that appellants and the informant have settled their dispute amicably and, as a matter of fact, the allegation of calling caste name has been given in the written report with an intent to make the offence graver. It is further submitted that moreover, even if the allegation levelled against the appellants is taken into consideration, then also, no case under SC/ST (Prevention of Atrocities) Act is made out because mere calling caste name does not constitute an offence under the provision of SC/ST Act.

6. On the other hand, learned Addl. Public Prosecutor supported the impugned order arguing that the written report filed by the informant discloses an offence under the provision of SC/ST Act and moreover, the court below has also taken cognizance of the aforesaid offence.

7. As I have stated above that the learned Sessions Judge rejected the prayer for anticipatory bail of the appellants on the ground of maintainability but I find that learned Sessions Judge failed to take into account the law settled down by the Apex Court of this country as well as this court in various decisions to this effect that when written report does not constitute any offence under the provision of SC/ST Act, petition filed under section 438 of the Cr.P.C is maintainable. The impugned order goes to show that learned Sessions Judge did not take pain to note down as to whether the offence of SC/ST Act is made out in the present case or not. However, the first information report goes to show that the appellants abused the informant calling his caste name in the premises of a school. Moreover, as it has already been held by the court in several decisions that mere calling caste name does not constitute an offence of the SC/ST Act unless caste



name is taken with an intention to humiliate the person or lower down his prestige in society.

8. Therefore, considering the aforesaid facts and circumstances as well as submissions of the parties, this criminal appeal is allowed and the impugned order dated 12.8.2016 passed by learned Sessions Judge, Darbhanga, Bihar in ABP no. 1052/2016 is set aside.

9. 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 Sessions Judge, Darbhanga in SC/ST (Darbhanga) P.S. Case no. 11/2013 subject to condition as laid down under section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

Shahid/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	17.12.2016
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