

**IN THE HIGH COURT OF JUDICATURE AT
PATNA
Criminal Appeal (SJ) No.749 of 2017**

Arising Out of PS.Case No. -8 Year- 2015 Thana -SC/ST District- MUNGER

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1. Saud Ali son of Late Muslim Ali
2. Mahtab Ali son of Late Muslim Ali Both residents of Village - Parham,
P.S. - Nayaram Nagar, District - Munger.

.... Appellant/s

Versus

. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prem Chand Yadav

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER**

3 19-04-2017 Heard learned counsel for the appellant as well as
learned Special Public Prosecutor.

There happens to be an allegation attributed against
the appellants including one Rahiman Khatoon who seeing the
informant present in his field, came, abused by caste name and
then, Rahiman Khatoon gave sickle blow. Subsequently thereof,
both the appellants also assaulted by means of fist and slaps.

Learned counsel for the appellants has referred
Annexure-5 order dated 12.7.2016 passed in Cr. Misc. No. 26685
of 2016 and submitted that there happens to be specific finding
under Annexure-5 that no offence under SC/ST (POA) Act is
made out, on account thereof, the appellants should also be



allowed to enjoy privilege of anticipatory bail.

At the other end, learned Special Public Prosecutor opposed prayer for anticipatory bail and submitted that after a division Bench decision relating to ***Bisheshwar Misra and another Vs. State of Bihar reported in 2016(4) PLJR 1058 (DB)***, any opinion having expressed under Annexure-5 would not be appreciated at the moment. That being so, in terms of section 18 of the SC/ST (POA) Act, the instant appeal could not survive.

From perusal of the Annexure-5, it is evident that there happens to be no express opinion rather at para-4, it has been incorporated while perceiving submission of the petitioner that since the alleged occurrence has not taken place in public view, hence, no offence under SC/ST (POA) Act is made out. Moreover, the issue what the public view means for the present purpose, the aforesaid order is completely silent. Now coming to facts, it is evident that apart from having abused by caste name, was also assaulted and that part of allegation was not at all taken into consideration more particularly whether the aforesaid activity will justify registration of instant case under SC/ST (POA) Act.

The division Bench under Bisheshwar Mishra (supra) case particularly under paras 27 and 28 has confined the court to perceive the presence of prima facie case under SC/ST



(POA) Act only after having cursory perusal of the allegation from initial version, may be Fard-beyan/written report/complaint etc. without having any sort of roving enquiry. That means to say, allegation on its face has to be seen and considered, after due exercise under guise of aforesaid principle, presence of prima facie case is found duly substantiated whereupon, the instant appeal is found non-maintainable and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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