

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.839 of 2017

Arising Out of PS.Case No. -56 Year- 2016 Thana -TURKAULIYA District-
EASTCHAMPARAN(MOTIHARI)

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1. Pramod Sah , Son of Banti Sah,
2. Banarsi Sah, Son of Late Shankar Sah.
Both Resident of Village- Belwa Tiwari Tola, P.S.- Turkaulia, District- East
Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Virendra Kuar, Adv.

For the Respondent/s : Mr. Sri Sadanand Paswan, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 **21-04-2017** Heard learned counsel for the appellants as well as

learned Special Public Prosecutor assisted by learned counsel for

the informant.

Complaint was filed by the informant which was sent

to local police for registration and investigation in accordance with

Section 156(3) of the Cr.P.C and the gist of allegation happens to

be that on the alleged date and time of occurrence, accused

persons so named therein with the assistance of two unknown

labourers cut down the tree standing over Khata No.176, Khesra

No.1245, Area 2 kattha which he had purchased and during course

thereof, they have assaulted the informant, abused by caste name,

torn his cloth and spitted over him.

It has been submitted on behalf of appellants that

there happens to be bonafide land dispute amongst the parties



whereupon intentional allegation has been attributed. It has also been submitted that there happens to be inordinate delay in institution of the case. Furthermore, in terms of observation having made by the Division Bench in *Bisheshwar Mishra* case, to ascertain applicability of SC/ST (POA) Act, the court has to endeavour and further, during said course the plea of the defence is to be considered. So, it has been submitted that it happens to be good case wherein appeal is fit to be allowed.

The learned Special Public Prosecutor assisted by learned counsel for the informant vehemently opposed the prayer and submitted that scrutiny, in whatever form may be, has been completely forbidden under *Bisheshwar Mishra* case and for that referred para-28 thereof.

“28. We reiterate that while considering the application under Section 438 of the Code, it is not open to the Court to enter into roving inquiry of the veracity of allegations levelled under the Act. It can only look to the First Information Report or the Complaint just in order to prima facie determine whether the ingredients of any offence under the Act at all can be said to have been attracted against the person seeking pre-arrest bail.”

That being so, the allegation on its face has to be perceived which, once exercised completely nullify the submission made on behalf of appellants.

In *Bisheshwar Mishra & Anr. vs. The State of Bihar*



reported in **2016(4) PLJR 1058** under para-27 as well as 28, it has been observed that irrespective of presence of Section 18 of the Act barricading prospect of anticipatory bail, the court is found competent enough to entertain the same in case, on cursory perusal of the allegation, no offence under SC/ST (POA) Act is made out and for that, limited scope has been left out forbidding, in depth scrutiny. In the aforesaid background, when the allegation on its face has been gone through, it is apparent that a tree was cut away from the field of complainant/informant who happens to be member of scheduled caste and by such activity, the accused persons put hurdle in enjoyment thereof. Furthermore, the other activity to the extent of spitting over the informant in presence of other does satisfy and the cumulative effect thereof attract Section 3(1)(v) as well as (x) of the SC/ST (POA) Act whereupon, anticipatory bail is found duly barricaded in terms of Section 18 of the Act. Consequently appeal is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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