

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.582 of 2017

Arising Out of PS.Case No. -103 Year- 2016 Thana -BEGUSARAI COMPLAINT CASE District-
BEGUSARAI

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MOHAN PATHAK, SON OF MUNINDRA PATHAK @ MUNIJEE,
RESIDENT OF VILLAGE- BANDWAR, P.S.- NEEMA CHANDPURA,
DISTRICT- BEGUSARAI.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR.

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Pramod Mishra, Adv.

For the Respondent/s : Mr. Binay Krishna, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3. **11-04-2017** Heard learned counsel for the appellant as well as
learned Special Public Prosecutor assisted by learned counsel for the
complainant.

In light of principle decided by the Hon'ble Apex Court in
Bachu Das vs. State of Bihar & Ors. reported in **(2014) 3 SCC 471**
no prayer under Section 438 Cr.P.C. is maintainable, in case
cognizance is taken under the SC/ST (POA) Act. From the order
impugned, it is evident that in a complaint case cognizance had
already been taken therefore, instant memo of appeal under the colour
of Section 438 Cr.P.C. is found non-maintainable and is accordingly
dismissed. However, it is made clear that during course of surrender
before the learned lower court, the learned lower court will consider
the merit of the case without being influenced by the instant order.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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