

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.461 of 2017

Arising Out of PS.Case No. -187 Year- 2016 Thana -HATHUA District- GOPALGANJ

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1. Krishna Shahi,
2. Umesh Shahi Both sons of Late Manager Shahi.
3. Tuna Rai, Son of Late Suresh Rai.
4. Kamal Pandey, Son of Bharat Pandey, All residents of Village-Chainpur, P.S. Hathua, District- Gopalganj.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Thakur, Advocate
Mr. Akhilesh Kumar, Advocate
For the Respondent/s : Smt Usha Kumari No-1, Spl.P.P

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

5 25-04-2017 Appellants happen to be accused in connection with Hathua PS Case No. 187/2016 registered under Sections 341, 323, 504, 34 and 3 (i) (x) SC/ST Act who have been refused by the 1st Additional Sessions Judge, Gopalganj to be enlarged on an anticipatory bail vide order dated 14.11.2016, passed in ABP No. 3741/2016 filed instant appeal under the garb of Sections 14A (2) of the SC/ST (POA) Act.

2. Fard-e-beyan of informant was recorded at Hathua Hospital on 23.10.2016 whereunder the informant, Dilip Gond had narrated that on the same day while he was coming to Nautan over his motorcycle and as soon as reached near Chainpur Brhamsthan, he was stopped by Krishna Shahi after overtaking him by his own



Safari Vehicle. Then thereafter, he along with Umesh Shahi, Dinesh Shahi, Krishna Shahi and Kamal Pandey got down and began to assault with butt of the rifle as well as stick, as a result of which, he began to cry. Meanwhile, another Scorpio halted there wherefrom Bharat Mahto and Tunna Mahto got down who were also armed with rifle and joined in assaulting the informant with butt of the rifle as well as Lathi after saying that *Gondwa* should be assaulted. Hearing his cry, the persons of the surrounding came in his rescue and was lifted to hospital.

3. Learned counsel for the appellants has submitted that registration of instant case under SC/ST (POA) Act happens to be contrary to the spirit of law as *Gondwa* is not at all identified as a sub-caste of Scheduled Caste. That being so, other Sections so survive give a clear cut impression of being bailable in nature which, the Court should observe negating registration of the case under SC/ST (POA) Act.

4. Apart from this, it has also been submitted that the allegations should not be considered in a manner as flashed rather it happens to be counter blast to a case instituted by Sunil Manjhi, driver of appellant, Krishna Shahi bearing Hathua PS Case No. 188/2016 which has also been registered under SC/ST (POA) Act including other allied Sections and so, when there happens to be



version and counter version with regard to an occurrence, then in that event, substantial justice is expected which should not be blurred on the ground of non maintainability of the appeal. Furthermore, it has also been submitted that after close scrutiny of the allegation, it is evident that the case has been purposely instituted under SC/ST (POA) Act just to jeopardize interest of the appellants.

5. Learned Special P.P. opposed the prayer and submitted that in its basic form, the Act does not allow application of anticipatory bail by way of prescribed limitation in accordance with Section 18 of the Act. Though by judicial pronouncement, more particularly, in the case of *Bisheshwar Mishra v. State of Bihar* as reported in **2016(4) PLJR 1058**, the scope of judicial scrutiny on that very score has been perceived in the background of principle laid down by Hon'ble Apex Court in the case of *Vilas Pandurang Pawar* as reported in **AIR 2012 SC 3316** and so the mode of consideration should be strictly in a sense as laid down therein.

6. As such, in depth scrutiny by way of consideration of case and counter case and further non application of the Act, in the aforesaid background, would not find favour. Furthermore, it has also been submitted that *Gondwa* happens to be used in local



dialect and further on that very score, no one could be allowed to raise objection regarding identification of informant being a member of Scheduled Caste which could be perceived on its face as the informant had named himself as Dilip Gond.

7. As per Section 2 of the SC/ST (POA) Act, their status is to be perceived in terms of Article 366 of the Constitution of India which recognizes the list having prepared by the Centre or by the State, as the case may be, in terms of Article 341 as well as 342 of the Constitution, respectively.

8. From Gazette Notification, it is apparent that at Serial No. 12, there happens to be '**Gond**' and English version also is '**Gond**'

9. From perusal of the Fard-e-beyan, it is evident that informant had disclosed his name as Dilip Gond and on account thereof, the word *Gondwa* is nothing but an outcome of local dialect. So, informant happens to be member of Scheduled Caste.

10. Now coming to the allegation on its face, it is evident that a member of a Schedule Caste was assaulted and for that the case has been instituted under Sections 341, 323, 504, 34 and 3 (i) (x) SC/ST Act happens to be on account of incompetency of the O/C because of the fact that after amendment being enforced since 26th of January 2016, no such provision is found in



the Act.

11. Moreover, coming to the allegations which satisfy the ingredients of 3 (2) (v-a) SC/ST Act whereunder their complicity is found duly acknowledgeable though in omnibus manner, however, with the aid of Section 6 of the SC/ST (POA) Act, on account thereof, the instant appeal is found duly eclipsed under the guise of Section 18 of the Act, and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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