

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21405 of 2014

Arising Out of PS. Case No.-15 Year-2012 Thana- SC/ST District- Bhagalpur

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1. Tulsi Mandal S/o Late Asharfi Mandal
 2. Banti Mandal S/o Indradeo Mandal
 3. Mukesh Mandal S/o Dilip Mandal
 4. Amarjit Mandal S/o Radhey Mandal
 5. Ranjeet Mandal S/o Mahabir Mandal
 6. Shri Pati Mandal S/o Hallu Mandal
 7. Karu Mandal S/o Late Mahabir Mandal
 8. Ramdeo Muni S/o Late Jagarnath Muni
 9. Sujit Kumar Shukla S/o Ramdhari Mandal
 10. Naresh Mandal S/o Mistri Mandal
 11. Dilip Kumar Dipak s/o Ramdhari Mandal
 12. Brajesh Mandal s/p Mahendra Mandal All R/o village Jangal Gopali, P.S- Kahalgaon, Distt- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Criminal Miscellaneous No. 21475 of 2014

Arising Out of PS. Case No.-15 Year-2012 Thana- SC/ST District- Bhagalpur

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1. Abhishek Dwivedi @ Abhishek Dubey son of Akshay Dubey, resident of village- Kairiya, P.S.- Kahalgaon, District- Bhagalpur.
 2. Rajnish Dubey, son of Akshay Dubey, resident of village- Kairiya, P.S.- Kahalgaon, District- Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In Criminal Miscellaneous No. 21405 of 2014)

For the Petitioner/s : Mr. B.P. Pandey, Sr. Adv & Mr. Pravin Kumar Sinha, Adv.

For the Opposite Party/s : Mr. RAMSHANKAR DAS (SPL.PP)

(In Criminal Miscellaneous No. 21475 of 2014)

For the Petitioner/s : Mr. Lakshmi Kant Sharma, Adv

For the Opposite Party/s : Mr. RAM SHANKAR DAS(SPL.APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-09-2017



Heard learned counsel for the parties.

The present quashing applications under Section 482 of the Cr.P.C have been filed for quashing the order 28.11.2013, passed by the learned Chief Judicial Magistrate, Bhagalpur, taking cognizance against the petitioners for the offences punishable under Sections 147, 341, 323, 427, 379 and 504 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Briefly stated, the facts of the case is that informant Shambhu Paswan filed a written report before the S.H.O. S.C./S.T. Police Station, Bhagalpur on 02.06.2012, inter alia alleging that on 01.06.2012 at about 9:00 pm, the informant along with six others were going to attend the marriage of the daughter of Shri Jitan Paswan by a Sumo Jeep but due to dark night they lost their way and reached Village Jangli Gopali at 12:00 pm in the night and thereafter inquired about the way to Jethiyana village upon which accused-petitioners abused them by their caste name and on raising alarm the relative of informant-Shambhu Paswan, Jugal Paswan arrived there who were also abused by the accused-petitioners. When the informant protested against the abusive language of the



accused-petitioners, they assaulted him and thereafter snatched the belongings of cash and other articles. However, the informant managed to escape from the place of occurrence, and other persons accompanying him were brutally assaulted by the accused-petitioners. In the meantime, the police personnel of Kahalgaon Police Station came who rescued them and brought to hospital for treatment. On the basis of the aforesaid written complaint, a formal FIR was drawn by the police and S.C/S.T. P.S Case No. 15 of 2012 dated 02.06.2012 was instituted for the offences punishable under Sections 323, 341, 147, 148, 427, 379 and 504 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and thereafter the police proceeded with the investigation of the case. It has been further stated on behalf of the petitioners that the informant and other persons reached their village in order to commit some crime and when they were caught red handed, an FIR was lodged by the petitioners being Kahalgaon P.S. Case No. 165 of 2012 on 02.06.2012 for the offences punishable under Sections 379 and 511 of the Indian Penal Code. The place and time of occurrence of both the cases are same. It has further been submitted that the informant and witnesses in Kahalgaon P.S. Case No. 165 of 2012 have been



made accused in the present case, which has been filed as a counter case. It has further been submitted that no offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out.

After investigation, the police submitted chargesheet against the petitioners under Sections 147, 341, 323, 379, 504 and 310 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

On the basis of police report, case diary and materials available on record the court below had found *prima facie* case to proceed against the accused-petitioners and as such took cognizance for the aforesaid offences and issued process for their appearance to face the trial.

It has also been submitted that as investigation was carried out by a police authority who is below the rank of Dy. S.P., as such whole investigation so far as it relates to the offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, needs to be quashed. However, the issue is no more *res integra* and it has been decided by a Division Bench of this court in the case of ***Ram Deni Devi & Ors vs the State of Bihar reported in 2011(1)***



PLJR 1097, that after issuance of notification by the State Government the investigation conducted by A.S.I. is valid. The Apex Court in its judgment and order in the case of ***State of Bihar and Ors vs Anil Kumar, reported in AIR 2017 SC 2716***, has also upheld the validity of the Act and notification issued by the State Government empowering them to conduct investigation in such matters. Lastly it has been submitted that from reading of the FIR and evidence collected during investigation, no offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out.

At the stage of taking cognizance duty of court is only to see if any offence is made out or not. Any defence to be taken by the petitioners is to be raised only at subsequent stage and cannot be considered at the initial stage of prosecution. When the Magistrate has taken cognizance of an offence, the power of High Court to interfere is only to a limited extent. The High Court cannot substitute its view for summoning order passed by the trial court. While exercising inherent jurisdiction under Section 482 of the Cr.P.C, High Court cannot appreciate the evidence and its truthfulness or sufficiency as it is the function of the trial court.

After hearing the parties and going through the order



passed by the court below taking cognizance against the petitioners for the offences punishable under Sections 147, 341, 323, 379, 504 and 310 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the order passed by the court below does not require any interference by this Court at this stage.

However, petitioners are at liberty to raise all the issues as raised in these petitions as well as other issues as permissible in law at the time of framing of charge, if not already framed.

With the said liberty and observation as made above both petitions are disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.09.2017
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