

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42180 of 2014

Arising Out of PS. Case No.-102 Year-2010 Thana- SHAMBHUGANJ District- Banka

1. Jafar Imam
2. Md. Taqui Imam Both Sons of Late budhu @ Ali Imam
3. Md. Rose Imam @ Rose Imam
4. Shadab Both of son of Md. Taqui Imam All resident of Village - Sampur Daka (Chutiya), Police Station - Shambhuganj, Dist.- Banka

... .. Petitioner/s

Versus

1. State of Bihar
2. Bhauthu Das Son of Late Sakul Das Resident of Village - Sampur Daka (Chutiya) Police Station - Shambhuganj, Dist.-Banka

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv
For the Opposite Party/s : Mr. SHAILENDRA KUMAR 2(APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-11-2017

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 01.10.2011, passed by the learned Chief Judicial Magistrate, Banka taking cognizance against the petitioner under Sections 341, 323, 448, 504, 506 read with 34 of the Indian Penal Code, and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in Shambhuganj P.S Case No. 102 of 2010(G.R. No. 1201 of 201).

Briefly stated, the facts of the case is that on 05.08.2010 one Bhautu Das gave a written complaint to the



Officer-in-charge of Shambhugang Police Station in which the informant alleged that on 04.08.2010 his son Anil Kumar Das was purchasing some articles in the shop of his co-villager namely Baungu son of late Haidar, in the meanwhile accused Md. Rose Alam was also standing there and told informant son to leave the way on which he replied that he was also purchasing tobacco, upon which Md. Rose Alam abused and assaulted with fists and slaps. The informant further alleged that when his son informed him upon which he went to the shop of Baungu then all the accused persons variously armed with gun and lathi entered into the house of the informant and assaulted his son and wife. It has further been alleged that they were in hospital for treatment, the accused persons threatened them by their caste name.

After lodging of the FIR, the police investigated the matter and found allegations levelled by the informant under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, not to be made out and submitted chargesheet on 29.09.2011 under Sections 341, 323, 448, 504, 506 read with Section 34 of the IPC. The judicial magistrate by its order dated 01.10.2011 deferred with the opinion of the investigating officer and took cogniznce under



Sections 341, 323, 448, 504, 506 read with Section 34 of the IPC as well as Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

On the basis of evidence collected during investigation, statement of witnesses recorded by the I.O., contents of FIR and other materials available on record, the court below took cognizance under the aforesaid sections and issued summons against the accused petitioners for their appearance to face the trial.

It has been submitted by learned counsel for the petitioners that they were co-villagers and have been falsely implicated in this case. No case under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is made out and as such the investigating officer has not submitted chargesheet against the petitioners as no case was made out during investigation under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The Magistrate is not bound by the opinion of the investigating officer and he can reach to his independent opinion on the basis of materials available on record and after going through the entire case record the learned Judicial Magistrate



found cases under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to be made out and took cognizance under those sections also. The High Court in its inherent jurisdiction cannot substitute the finding of the trial court, and sufficiency or adequacy of materials available on record is to be judged by the trial court and as such I am not inclined to interfere in the order passed by the trial court, however, the petitioners are granted liberty to raise all the issues raised in this petition as well as all other issues available to them in law at the subsequent stage of trial i.e at the time of consideration of his discharge petition or framing of charge, if not already framed.

With such liberty and observation the present petition is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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