

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1097 of 2016

Arising Out of PS.Case No. -410 Year- 2016 Thana -PHULWARI District- PATNA

1. Lalti Devi Wife of Late Kameshwar Prasad resident of Village Nagwan Dera, P.S. Janipur, District- Patna.

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

with

Criminal Appeal (SJ) No. 1155 of 2016

Arising Out of PS.Case No. -410 Year- 2016 Thana -PHULWARI District- PATNA

1. Sunita Devi Wife of Sri Amit Kumar @ Rakesh Kumar Resident of Village- Nagwan Dera, P.S. Janipur, District Patna

.... .... Appellant/s

Versus

1. The State of Bihar

.... .... Respondent/s

Appearance:

(In CR. APP (SJ) No.1097 of 2016)

For the Appellant/s : Mr. Sada Nand Roy

For the Respondent/s : Mr. Sadanand Paswan

(In CR. APP (SJ) No.1155 of 2016)

For the Appellant/s : Mr. Sada Nand Roy

For the Respondent/s : Mr. Binay Krishna

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 09-01-2017

1. Both the above stated criminal appeals arise out of Phulwarisharif (Janipur) P.S. case no. 410/2016 registered under sections 494, 498A, 341, 323, 306 of the Indian Penal Code, section 3 ( I) (X) of the SC/ST (Prevention of Atrocities) Act and accordingly, both the above stated appeals are being disposed of by this common order.



2. Heard learned counsel for the appellants as well as learned Special Public Prosecutor for the State.

3. These criminal appeals filed under section 14 (2) A of the SC/ST (Prevention of Atrocities) Amendment Act have been preferred against the order dated 10.11.2016 passed by learned Addl. Sessions Judge II, Patna in ABP no. 7030/2016.

4. Appellant in Cr. Appeal no. 1097/2016 is mother whereas appellant in Cr. Appeal no. 1155/2016 is wife of co- accused Amit Kumar who solemnized his marriage with the deceased but when the deceased was not allowed to enter into her matrimonial home, she committed suicide.

5. Submission on behalf of the appellants is that even if the prosecution story assumed to be true, then also, no case under section 3 ( I) (X) of the SC/ST (Prevention of Atrocities) Act is made out against the appellants because there is nothing in the written report to show that the deceased was not allowed to enter into her matrimonial home as she was a member of scheduled caste community rather admission of the informant goes to show that marriage of the deceased had taken place with co- accused Amit Kumar with the consent of family of both the above stated persons and, therefore, if the marriage of the deceased was solemnized with co- accused Amit Kumar with the consent of their family members, question of application of the SC/ST (Prevention of Atrocities) Act does not arise. It is further submitted that learned court below did not consider the facts of the case in right perspective as a result whereof the learned court below came on wrong conclusion and refused to give relief under section 438 Cr.P.C tasking aid of section 18 of the SC/ST Act.

6. The learned court below has observed in the impugned order that section 18 of the SC/ST Act does not permit to entertain petition filed under



section 438 of the Cr.P.C and, therefore, the aforesaid facts go to show that the learned court below refused to grant the privilege of anticipatory bail to appellants on the ground of maintainability.

7. In my view, learned counsel appearing for appellants rightly submitted that application of provision of SC/ST Act appears to be doubtful in the present case in respect of appellants and, therefore, petition filed under section 438 of the Cr.P.C is maintainable.

8. Considering the aforesaid facts and circumstances as well as submissions of the parties, these criminal appeals are allowed and the impugned order dated 10.11.2016 passed by learned Addl. Sessions Judge II, Patna in ABP no. 7030/2016 is set aside.

9. Accordingly, it is ordered that in the event of arrest/ surrender within six weeks from the date of receipt of this order to the concerned court, let the appellants above named be released on bail on furnishing bail bonds of Rs 10,000/- each with two sureties of the like amount each to the satisfaction of Mrs. Shema Eram, Judicial Magistrate, Ist Class, Patna/ concerned court in Phulwarisharif (Janipur) P.S. case no. 410/2016 subject to condition as laid down under section 438(2) of the Cr.P.C.

**(Hemant Kumar Srivastava, J)**

Shahid/-

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| AFR/NAFR          | NAFR      |
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