

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6704 of 2017

Arising Out of PS.Case No. -273 Year- 2015 Thana -SHEKHPURA COMPLAINT CASE District-
SEKHPURA

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1. NANHU MIAN @ MD. NANHU @MD NANHU MIAN, Son of Fakru Mian, R/o Village- Murgichak, P.S.- Sare, Dist.- Nalanda.
2. Md. Kamal Mian @ Md. Kamal, S/o Late Ansarul Mian, R/o Village- Ramjanpur, P.S.- Barbigha, Dist.- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Manju Devi, Wife of Pyaru Paswan, R/o Village- Ramjarpur, P.S. Barbigha, Distt.- Sheikhpura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dr. Anjani Pd. Singh

For the Opposite Party/s : Mr. Sri Dinesh Singh

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-04-2017 Heard learned counsel for the petitioner and
respondent-State.

The present application has been filed for quashing the order dated 30.07.2015 passed in Complaint Case No. 273C of 2015 by learned ACJM-1, Sheikhpura whereby the process has been directed to be issued after cognizance being taken for the offences punishable under Sections 323, 341, 379, 504 and 506/34 of the IPC and Sections 3(1)(r)(s) of the S.C./S.T. (Prevention of Atrocities) Act.

Learned counsel for the petitioner submits that the accusation has been levelled in the background of land dispute and



cognizance under Section 3(1)(r)(s) of the S.C./S.T. (Prevention of Atrocities) Act was taken when the ordinance, through which said amendment was brought, got lapsed and this amended provision was not effective on the date the complaint was filed or the order of issuance of process, after cognizance being taken, was passed.

It is submitted by learned counsel for the State that after finding prima facie case the process was directed to be issued.

Considering the rival submissions of the parties, this Court is of the view that at the level of passing order under Section 190(1)(a) of the Cr. P.C., the Court has only to apply the judicial mind for the purposes of taking cognizance and not to examine the veracity of accusation or to weigh the evidence collected during investigation or the S.A. of the complainant or statement of enquiry witness as to whether the same will ultimately warrants the conviction of the accused persons or not. A useful reference in this connection may have to the case of **U.P. Pollution Control Board Vs. Bhupendra Kumar Modi and Another** reported in **(2009) 2 SCC 147**. Paragraph 23 of the said judgment reads as follows:-

“It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the



complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused.”

Moreover, the impugned order was passed on 30.07.2011 and there is nothing on record to suggest the present stage of the case.

In the circumstances, the present application is disposed of with a liberty to the petitioner to raise all the contention including the application of amendment of provision of Section 3 (i)(r)(s) of the S.C./S.T. (Prevention of Atrocities) Act, at the time of framing of charge if the charge has already not been framed.

(Dinesh Kumar Singh, J)

Amrendra/-

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