

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1178 of 2016

Arising Out of PS.Case No. -426 Year- 2016 Thana -FORBESGANJ District- ARRARIA

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1. MD. RUSTAM SON OF MD. MUSHARU
2. MD. FAJJO SON OF MD. MUSHARU
3. MD. MUSHARU SON OF LATE MD. ASHRAF.
ALL ARE RESIDENT OF VILLAGE-RAMPUR SOUTH WARD
NO.7, POLICE STATION-FORBESGANJ, DISTRICT-ARARIA.
..... APPELLANT/S

VERSUS

THE STATE OF BIHAR RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Mukesh Kumar Rana, Adv.
For the Respondent/s : Mr. Binay Krishna, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 28-02-2017 Heard learned counsel for the petitioner as well as
learned Special Public Prosecutor.

Learned counsel for the appellant has submitted that though there happens to be allegation attributed at the end of the prosecution to have assaulted the informant as well as her husband but no injury is there. Furthermore, it has also been submitted that she-buffalo of the prosecution party grazed crop of the appellants for which they were scolded and in retaliation, this case has been filed. In the aforesaid background, it has been submitted that no offence under SC/ST (POA) Act is made out and so far, other allegations are concerned, all have purposely been introduced.

The learned Special Public Prosecutor opposed the prayer.

In *Bisheshwar Mishra vs. State of Bihar* reported in



2016(4) PLJR 1058, Division Bench had occasion to elaborately dealt with the situation and further in para-28, it has concluded in following way:

“28. We reiterate that while considering the application under Section 438 of the Code, it is not open to the Court to enter into roving inquiry of the veracity of allegations levelled under the Act. It can only look to the First Information Report or the Complaint just in order to prima facie determine whether the ingredients of any offence under the Act at all can be said to have been attracted against the person seeking pre-arrest bail.”

Under the guise of aforesaid legal preposition when the allegation on its face has been gone through, it is apparent that prima facie an allegation constitute an offence under SC/ST (POA) Act consequent thereupon, in terms of Section 18 of the Act instant petition for anticipatory bail is found duly barred.

That being so, instant appeal is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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