

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1392 of 2016

Arising Out of PS.Case No. -257 Year- 2016 Thana -PATORI District- SAMASTIPUR

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1. Rajesh Rai, s/o Dev Lal Rai

2. Pukar Rai, s/o Bechan Rai

Both are residents of vill-Dashhara Badki Bedi, PS- Patori (Mohanpur O.P.), Dist- Samastipur

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Bijay Bhushan Prasad

For the Respondent/s : Mr. Binay Krishna

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 10-03-2017

Heard learned counsel for the appellants, learned

counsel for the informant as well as learned Spl.P.P.

Learned counsel for the appellants has submitted that the order impugned has been passed by the Special Judge though the heading of the order speaks Court of 1st Addl. District & Sessions Judge, Samastipur. Supplementary affidavit has also been filed on behalf of appellant wherein though in specific terms, appellant failed to incorporate but tried to bring on record that the Court happens to be Special Court in terms of amended Act.

Learned counsel for the appellants has made emotional arguments apart from raising the merits of the case. It has been submitted that after having been armed with Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the



members of scheduled castes and scheduled tribes have become so aggressive that they are misusing the same and by such activity, atrocities are being committed over the persons belonging to other community. For the aforesaid reason, there should be adequate protection and in the aforesaid background, the observation having been made in para 28 of the Division Bench judgment reported in **2016 (4) PLJR pg 1058** should not be accepted in its literal sense rather, for adjudicating the issue, the Court should exercise its Appellate power to filter the allegation in the background of the defence or counter version having placed during course of hearing.

Brushing aside the same at an initial stage virtually would curtail the legal right of the aggrieved which could not be construed to be intention of the legislation. Accordingly, inspite of embargo having been under the Act by way of presence of Section 18 whereunder prayer for anticipatory bail has been barred, the Hon'ble Apex Court though allowed the retention of the aforesaid section by way of declaring the same to be intravirous, even then with some sort of liberty has been granted and that too, by way of allowing to filter the allegation to search out whether the allegation so attributed is within the scope of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act or not. If, the allegation, on such scrutiny is found acephalous one, then in that



event, Appellant will be found entitled for anticipatory bail.

In the aforesaid background, the observation having been made under para 28 of the aforesaid judgment appears to be contrary to the finding recorded by the Hon'ble Apex Court by permitting the Court to see at a glance the F.I.R./written report or complaint petition to search out whether the allegation so attributed on its face suggests applicability of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. As such, the observation of the Division Bench should be considered in same way. Furthermore, for such activity genesis of the occurrence would also be taken into consideration which could be a decisive factor in identifying applicability of the relevant law, as being backbone will expose the activity allegedly performed. So, it has been submitted that while appreciating the facts in issue in its entirety in terms of Section **14A (2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act**, the observation as well as finding recorded in the aforesaid pronouncement could not govern the limit of the Court atleast while exercising Appellate power. Consequent thereupon, the prayer for anticipatory bail having been made on behalf of appellant should be entertained and be allowed inspite of intention of legislation whatsoever may be, in the background of pendency of counter case and further, the



recital suggests land dispute amongst the parties.

The learned Spl.P.P. alongwith learned counsel for informant resisted the submission having been made on behalf of learned counsel for the appellants and submitted that any case having been instituted under ***Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*** would bar filing of anticipatory bail in terms of ***Section 18 of the Act***. Though some sort of privilege has been allowed that happens to be with a rigor and that rigor is to be followed because of the fact that basically petition happens to be non-maintainable. Therefore, for the purpose of entertaining anticipatory bail petition, one would not contend that such privilege to be crossed-over to accede with the prayer for anticipatory bail. More particularly, under the garb of counter claim or whatever may be. So submitted that the order impugned is sustainable whereupon, instant appeal is liable to be dismissed.

The Division Bench in ***Bisheshwar Mishra vs. State of Bihar*** reported in ***2016 (4) PLJR pg 1058*** have thoroughly disallowed the issue apart from others and after scrutiny of so many judicial pronouncements including that of Hon'ble Apex Court, has held that apart from the fact that in terms of ***Section 18 of Scheduled Castes and Scheduled Tribes***



(Prevention of Atrocities) Act, prayer of anticipatory bail was not at all maintainable under the garb of *Vilas Pandurang Pawar and Anr. v. State of Maharashtra and ors. AIR 2012 SC 3316* perceiving all sorts of constrain saved the way for entertaining anticipatory bail petition with some embargo, as laid down under para 28 thereof, by allowing the Court to see and trace out through narrow hole whether the allegation on its face is found exposed from the written report/ farbeyan/ complaint petition. Indepth scrutiny has been forbidden. In course of such exercise if no case is found to be duly covered under *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, then in that event, Court will be in position to grant anticipatory bail.

Coming to the merit of the case when the allegation on its face has been gone through, the allegation does suggest application of *Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, the offence punishable under the Act has been committed against member of Schedule Caste, knowing fully well regarding status of prosecution party, being co-villager, and for that presumption is found in terms of Section 8 (C) of the Act. That being so, on account of presence of prima facie material on record, instant appeal is found non-maintainable.



Consequent thereupon, this memo of appeal is
dismissed.

(Aditya Kumar Trivedi, J.)

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