

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1181 of 2016

Arising Out of PS.Case No. -47 Year- 2016 Thana -CHIRAIYA District-
EASTCHAMPARAN(MOTIHARI)

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1. NAWAL RAI SON OF LATE BHAJAN RAI
2. BIGANI DEVI WIFE OF LATE BHAJAN RAI
3. PHUL KUMARI @ PHULKUMARI DEVI, WIFE OF KISHORI RAI.
4. MANJU DEVI, WIFE OF NAWAL RAI.
5. KISHORI RAI SON OF LATE BHAJAN RAI.
ALL RESIDENT OF VILLAGE-MOHADIPUR, P.S.-CHIRAIYA,
DISTRICT-EAST CHAMPARAN.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Ajay Kumar Singh

For the Respondent/s : Mr. Binay Krishna, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 28-02-2017 Heard learned counsel for the petitioner as well as
learned Special Public Prosecutor.

Informant had filed written report alleging inter alia that on 18.03.2016 at about 08:00 PM the accused so named therein apprehended him and began to assault. Then thereafter they came at his house where they caught hold his daughter and began to drag towards village. During course thereof, the apparel having owned by his daughter was completely torned. Subsequently thereof, they caught hold his both daughter-in-law, dragged them outside the house and then assaulted. It has also been stated that accused persons are frequently indulged in such kind of activity and at earlier occasion also, they have assaulted.

It has been submitted on behalf of appellants that no offence under SC/ST (POA) Act is made out in the background of the fact that neither there happens to be an allegation that accused persons have acted contrary to their status by calling their caste



name, abusing by using their caste name in public view or at public place and so, registration of this case is found not at all legally permissible. It has also been submitted that so far other parts of allegation are concerned, considering the status of the petitioners in consonance with the part so alleged being omnibus in nature, they should be allowed to avail privilege of an anticipatory bail.

On the other hand the learned Special Public Prosecutor has controverted the submission having made on behalf of appellants.

By an amendment Section 8(c) has been incorporated whereunder the court has to presume with regard to personal knowledge of the accused relating to the status of the prosecution which, in the facts and circumstances of the case is found very much applicable being the co-villagers. In the aforesaid background if the activities of the accused is taken together, it is found that the allegation so attributed comes within the purview of Section 3(e) as well as 3(w) of the SC/ST (POA) Act.

That being so, the submission having made on behalf of appellant that on account of registration of instant case under 3(i)(x) of the SC/ST (POA) Act is not at all found appreciable.

Apart from this, as held by the Division Bench in ***Bisheshwar Mishra vs. State of Bihar*** reported in **2016(4) PLJR 1058** relevant passage under para-28 is quoted below:

“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.”



After having analytical evaluation of the material, as held above a prima facie case is made out under SC/ST (POA) Act and on account thereof, in terms of Section 18 of the Act, instant memo of appeal is found non-maintainable and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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