

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.520 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- AURANGABAD

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- 1) Ranjeet Mistry, son of Late Subeshwar Mistry
 - 2) Sanjay Sharna @ Sanjay Mistry, son of Ranjeet Mistry.
 - 3) Binay Sharma, @ Binay Mistry, son of Ranjeet Mistry
 - 4) Ajay Sharma @ Ajay Mistry, son of Ranjeet Mistry.

Resident of Village- Chilhki, Police Station- Amba, District-
Aurangabad

..... Appellant/s
Versus
State of Bihar
..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Singh, No.-4, Advocate

For the Respondent/s : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date: 14-10-2017

1) Heard learned counsel for the appellants and learned
counsel appearing on behalf of the State.

2) Four appellants in the instant case has questioned of
legality and validity of the judgment and the order dated 20.08.2002
passed by learned Special Judge, SC/ST (POA) Act, Aurangabad in
G.R. No. 1580 of 19098/ Trial No. 7/99 wherein the Trial Court
found them guilty and convicted under Section 3 (1) (v) of SC/ST (Prevention of Atrocities) Act and sentence them to undergo rigorous
imprisonment for six months and further to pay fine of Rs. 100/-
each and in default thereto undergo simple imprisonment for fifteen
days.



3) Mr. Arun Kumar Singh, appearing on behalf of the appellants has submitted that the appellants have been convicted in teeth of mandatory provisions of SC/ST (Prevention of Atrocities) and the rules framed thereunder.

4) In the instant case, the investigation of the case was done by the Sub Inspector of Police, having no jurisdiction to investigate the case in view of specific provisions contained under Section -7 of the Rules. He invited the attention of the Court that they have raised this issue before the Trial Court which is evident from paragraph-13 of the judgment of the Trial Court. Mr. Singh submitted that the trial Court erred in law in construing the notification dated 03.6.2002 authority investigation by Sub Inspector of Police as the notification can not over ride the statutory Rule 7 which is still holding the field.

5) The next submission of Shri Arun Kumar Singh that nothing was placed on record to establish that the appellant has right, title and possession of the land, which was subject matter of dispute and the appellants, were charged of committing offence under the SC/ST Act, 1995. This Court Find Force in the argument of the appellant as from the Trial Court Judgment it self it is evident that the Trial Court has noted that the document relating to the 'Bandobasti' and 'Parcha\ was filed on behalf of the prosecution after the closure of the case.



6) Mr. Arun Kumar Singh has drawn my attention to the discussions of Trial Court in paragraph-6 and submitted that one can not conclusively held that the informant has right, title and interest and possession over the land in question and in that view of the matter, provisions of the SC/ST (Prevention of Atrocities) Act, is not attracted.

7) Lastly, Mr. Singh submitted that from the record, it would appear that the Trial Court has completed the formalities of examination of the accused under Section 313 of the Cr.P.C.

8) Learned counsel appearing on behalf of the State submits that the Trial Court has committed no illegality by convicting the appellants as the SC/ST (Atrocities Act) is designed to protect the most dipressed class and the appellants are in facts, found guilty of Atrocities on the informant, who belongs to the category of SC/ST.

9) Having gone through the record and discussion of the trial Court, it appear that the issue of competence and jurisdiction of Sub Inspector to investigate the case was raised on behalf of the accused and reference of the **jugement reported in 2002 Vol- 1 CCR-59** was made and the Trial Court has noted the aforesaid submission of the defence in paragraph -13 of the judgement. However in paragraph-14, the Trial Court relying upon the notification of the Government dated 3.06.2002 rejected the said



contention ignoring the legal position that notification can not amend the statutory Rule.

10) From perusal of the record, it is admitted position that the instant case was investigated by the Sub Inspector of Police whereas under Rule 7 of the SC/ST (Prevention of Atrocities) Act, 1995 it is specified that the offence committed under the Act shall be investigated by police officer not below the rank of Dy. Superintendent of Police.

11) From the record, it appears that question of general nature was posed before the accused and all adverse material was not confronted to the appellant while examining under Section 313 Cr.P.C. The law in this regard is well settled that examination of the accused under Section 313 Cr. P.C. is not empty formality, the Court is supposed to confront the accused persons with all adverse circumstances.

12) After going through the record and hearing the submission made by the learned counsel, appearing on behalf of the appellants that investigation contrary to Statutory Rule can not be done by any officer below the rank of Dy.S.P. and in this case investigation was done by Sub Inspector was totally without jurisdiction. The law is well settled in **Taylor Vs. Taylor, 1875 (1) Chancery (Div) 426** where the principle was laid down that if law requires a thing to be done in a particular manner, it has to be done in



the manner prescribed any other mode of its performance is forbidden by necessary implication.

13) This view was reiterated in the case of **Nazir Ahmad Vs King Emperor AIR 1936 P.C 236** and the Hon'ble apex Court has reiterated the principle even in the case of TADA reference in this connection may be made to the case of **State of Rajasthan Vs. Mohinuddin Jamal Alvi and Another (2016) 12 SCC 608** paragraphs 5 to 7 of the said judgment is illuminating on the point.

5) In arriving at the aforesaid conclusion, the Court also referred to and relied upon the three-Judge Bench decision of this Court in Anirudhsinhji Karansinhji Jadeja v. State of Gujrat, in which the position in law was stated in the following manner: (SCC P.307, PARA-11)

“11. The case against the appellants originally was registered on 19.03.1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. Why? Was it because he was reluctant to exercise jurisdiction vested in him by the provision of Section 20-A (1)? This is a case of power conferred upon one authority being really exercise by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the discretion is exercise under the direction or in compliance with some higher authority's instruction, then it will be a case of failure to exercise discretion altogether. In other woerds, the discretion vested in the DSP in this case by Section 20-A



(1) was not exercise by the DSP at all.”

6. The learned counsel appearing for the State of Rajasthan tried to argue that the Division Bench in the aforesaid judgment in Hussein Ghadially did not interpret the decision rendered in Anirudhsinhji Karansinhji Jadeja correctly. As according to him, in Anirudhsinhji Karansinhji Jadeja, this Court had given one more reason for quashing the TADA proceedings which is contained in para-15 of the said judgment, as in the said paragraph, the Court noted that the State Government had given sanction without even discussing the matter with the investigating officer and without assessing the situation independently which showed lack of proper and due application of mind of the State Government by given sanction/consent. His submission predicated on para-15 of the said judgment that the prosecution would be treated as bad in law only if there was a default on the part of the prosecutor on both the aspects, namely, only when violation of Sub Section 91) of Section 20-A as well as grant of prior approval by the District Superintendent of Police is not there and also when the State Government while giving sanction/consent has not applied its mind independently. We do not agree with the contention of the learned counsel for the State. From the reading of the judgment in Anirudhsinhji Karansinhji Jadeja, it becomes clear that this Court had given the aforesaid two reasons while holding that the trial against the accused persons in the said case under TADA was vitiated. However, that does not mean that both the reasons have to be satisfied. Even both are independent of each other and even if one violation is found that would be sufficient to upset the trial. That is what this Court did in



Hussein Ghadi ally.

7. From the aforesaid, it becomes clear that since the prior approval of the District Superintendent of Police was not taken in the instant case, the trial got vitiated on this ground itself. The appeals filed by the convicted persons being Criminal Appeals Nos. 464-66 of 2013 are allowed setting aside their conviction. The other appeals which are preferred by the State being Criminal Appeal Nos. 2464-66 of 2014 are dismissed.

In view of the above, the entire prosecution was without jurisdiction and on that score, the entire action of the prosecution is nullity in the eye of law.

14) Adverting to the submission of Mr. Arun Kumar Singh that in order to attract provisions of the Act, the prosecution was required to establish that the informant has right, title and possession over the land. This Court has perused the record and from the order of the Trial Court itself and the statement of the informant, it appears that there was serious dispute as to the right, title, possession over the land and as such it can not be held that the informant has right, title or possession over the land. In the aforesaid circumstance, it can not be established that the appellants have committed alleged act in order to occupy the land in question.

15) So far as the submission of Mr. Arun Kumar Singh that the trial Court has completed empty formality while examining the accused under Section 313 Cr. P. C. is concerned, in the opinion of this Court in the instant case, accused were not confronted with the



adverse circumstances and the materials and only formalities were complied with.

16) Having gone through the entire materials on record, this Court is of the considered view that the conviction of the appellant vide Judgment under appeal by the Court below is unsustainable.

Accordingly the judgment of the Trial Court dated 20th August, 2002 is set aside.

The appellants are discharge from the liabilities of the bail bonds.

The instant appeal is accordingly, allowed.

(Anil Kumar Upadhyay, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
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