

Arising Out of PS.Case No. -3 Year- 2015 Thana -SC/ST PS District- BUXAR

.... Petitioner/s

1. The State of Bihar.
2. Munna Paswan Son of Ram Prasad Paswan Gram + Post- Sherpur, P.S.- Buxar Industrial, District- Buxar.

Appearance :

For the Petitioner/s : Mr. Vijay Kumar
For the Opposite Party/s : Mr. Sadanand Paswan

2 20-04-2017 Heard learned counsels for the petitioner and
learned Additional P.P. for the State.

The present application has been filed for quashing the order, dated 18.12.2015/ 23.12.2015, passed by learned Additional Judicial Magistrate 1st, Buxar, in SC/ST P.S. Case No. 3 of 2015, whereby, processes have been directed to be issued after cognizance being taken for the offences punishable under Sections 3(1) (x), (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

The prosecution case is that on 23.7.2014, at 7.30 A.M., when the informant was having breakfast with his family members, the accused persons including the petitioner



arrived and started uprooting the bamboo fence on the boundary of the agricultural farm of the informant. On protest being made, co-accused Shankar Dutt pushed the informant on the ground by pressing his neck, causing injury on his hand and back. When the informant's wife came to his rescue then she was pushed down by co-accused Khedan Yadav and her clothes were torn. Co-accused Omkar and Ayodhya made attempt to outrage her modesty and snatched her Mangalsutra. They also abused by calling caste name. On alarm being raised, the villagers came and saw the occurrence. Thereafter, the informant went to the police station for lodging the case but the same was not taken. Ultimately, the complaint was lodged, which was transferred to the police under section 156(3) Cr.P.C., leading to registration of SC/ST P.S. Case No. 3 of 2015 at Buxar, under sections 323, 504 and 354 of the Indian Penal Code and section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

On conclusion of investigation, the police submitted final form (chargesheet) under sections 323, 504 and 354 of the Indian Penal Code and section 3(1)(x) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act against six persons including the petitioner. The learned ACJM I, Buxar, vide order, dated 18.12.2015/23.12.2015, directed for issuance of



process after cognizance being taken under sections 323, 504 and 354 of the Indian Penal Code and sections 3(1)(x) and (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act.

It is submitted by the learned counsel for the petitioner that in the background of land dispute, the accusation has been levelled, as there is dispute between two vendees of the father of the petitioner to whom he had transferred certain lands.

It is submitted by learned APP that on finding prima facie case, the process has been directed to be issued against the petitioner.

Considering the rival submission of the parties, in view of this court, at the stage of exercising jurisdiction under Section 190(1)(b) Cr.P.C., the Magistrate has only to see the prima facie case. The only added advantage, at this stage available to the Magistrate is that he has occasion to go through the materials collected during investigation and brought on record by way of police report submitted under section 173 (2) Cr.P.C.. This is not the stage when the Magistrate is supposed to consider the defence version, as has been held in the case of State of Orissa Vs. Devendra Nath Padhi, (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:



“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

The impugned order was passed on 18.12.2015/ 23.12.2015, but there is nothing on record to suggest the present stage of the case.

Hence, at this stage, this Court is not inclined to interfere. The present quashing application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

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