

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41865 of 2013

Arising Out of PS.Case No. -170 Year- 2011 Thana -JAGDIHSPUR District- BHOJPUR

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Sanjay Choudhary Son of Late Shri Jagdeo Choudhary Resident of Village
Dulaul, P.S. Jagdishpur, District- Bhojpur

.... Petitioner

Versus

1. The State of Bihar
2. Gayan Dev Baitha Son of Asam Baitha Resident of Village Dulaul, P.S.
Jagdishpur, District Bhojpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Akhileshwar Prasad, Senior Advocate

For the State : Mr. Gopesh Kumar, APP

For O.P. No.2 : Mr. Parmatma Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

6 04-07-2017

Heard learned counsel for the parties.

This quashing petition is directed against order dated 29.08.2012, passed by learned Chief Judicial Magistrate, Bhojpur at Ara in Jagdishpur P.S. Case No.170 of 2011 whereby cognizance has been taken under Sections 341, 323, 325, 427 and 448/34 of the Indian Penal Code and also under Sections 3(v)(x)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

It is submitted on behalf of the petitioner that petitioner himself is a member of Scheduled Caste, as per the caste certificate, cognizance has been taken against him under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 also but this Act does not operate against an accused belonging to a member of Scheduled Caste/Scheduled Tribe.

Learned counsel appearing on behalf of opposite party



no.2 submits that before passing of the stay order by this Court, already charge was framed in this case and two witnesses were examined so the matter has become infructuous.

It appears true that already charge was framed when further proceeding in the court below was stayed by this Court earlier vide order dated 08.05.2014 and two witnesses already examined during trial moreover there are other alleged offences under the Indian Penal Code besides Sections 3(v)(x)(xi) of the SC/ST Act so this petition has already become infructuous. The cognizance of the offence is taken of the offence and not against particular accused however, the petitioner may raise this point that framing of charge against him under Sections 3(v)(x)(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not applicable in view of the fact that petitioner is a member of Scheduled Caste. The court may alter charge at any time prior to delivery of judgment according to Section 216 Cr.P.C. So petitioner may move a petition before the trial court for the said purpose, but there is no ground for setting aside the cognizance order.

Accordingly, this quashing petition is dismissed.

(Arun Kumar, J.)

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