

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1164 of 2016

Arising Out of PS.Case No. -63 Year- 2016 Thana -SC/ST District- SITAMARHI

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1. Birendra Sah @ Bijendra Sah, Son of Bishnu Sah,
2. Bimla Devi, Wife of Birendra Sah @ Bijendra Sah All resident of
Village- Rajopatti, P.S.- Sitamarhi, District- Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Kant Singh, Advocate

For the Respondent/s : Mr. Binay Krishna, Spl.PP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

4 17-03-2017 Heard learned counsel for the appellants as well as
learned Spl.PP for the State.

Learned counsel for the appellants has raised a preliminary objection over registration of instant case under SC/ST (POA) Act in the background of presence of husband of informant as an accused. To substantiate the same, it has been submitted that once husband has been shown to be in the camp of accused persons and further his activities had also been perceived by the informant during course of commission of occurrence, on account thereof, the offence as alleged would not attract application of SC ST (POA) Act. Apart from this, it has also been submitted that there happens to be no specific allegation attributed to the appellants. Furthermore, it has also been submitted that appellant no.2 is a lady.



Learned Special P.P. opposed the prayer and submitted that the submissions having been made on behalf of appellants would require meticulous consideration which is found forbidden as observed under para-28 in the case of ***Bisheshwar Mishra v. State of Bihar*** as reported in ***2016(4) PLJR 1058***.

From perusal of the written report itself, it is evident that the occurrence had taken place in two parts. The first part suggests presence of appellant along with other co-accused who happens to be accused in earlier case having launched on behalf of informant bearing case no. 62/2016 (though controverted by the appellants) and further abused the informant by calling her caste name and then all of them brutally assaulted her. Subsequently thereof, her leg was twisted in such a manner that it got dislocated. Apart from this, one of the accused, Mohan Sah outraged her modesty. The second part shows the presence of husband and for that an allegation has been attributed to him by the informant as she had married with Braj Kishore Sah and for that a document was prepared at her instance, so she should live with aforesaid Braj Kishore Sah which has been denied by the informant.

Because of the fact that it happens to be a petition under the garb of Section 438 CrPC which is found strictly prohibited in terms of Section 18 of the SC/ST (POA) Act, on account thereof,



by way of judicial pronouncement, some sort of relaxation has been given in favour of accused but, such privilege has been found duly restricted with the condition imposed under para-28 of ***Bisheshwar Mishra v. State of Bihar*** as reported in ***2016(4) PLJR 1058.***

Consequent thereupon, the Court is found forbidden to make examination of the submission having been raised on behalf of appellant in meticulous way. That being so, instant memo of appeal is found non maintainable and is, accordingly, rejected.

(Aditya Kumar Trivedi, J)

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