

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.11 of 2017

Arising Out of PS.Case No. -140 Year- 2015 Thana -BIBHUTIPUR District- SAMASTIPUR

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1. BAHADUR SINGH SON OF LATE JAI KISHUN SINGH.
 2. MITHILESH SINGH SON OF LATE RAM NARAYAN SINGH,
BOTH RESIDENT OF VILLAGE- CHAK HABIB, TOLA, P.S.-
BIBHUTIPUR, DISTRICT- SAMASTIPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Abhay Shankar Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 17-03-2017 Heard learned counsel for the appellants as well as learned
Special Public Prosecutor.

It has been submitted on behalf of learned counsel for the appellants that even giving bare perusal of the allegation in terms of observation having made in *Bisheshwar Mishra vs. State of Bihar* reported in **2016(4) PLJR 1058**, no offence under SC/ST (POA) Act is made out and on account thereof, instant memo of appeal relating to grant of an anticipatory bail is maintainable.

Furthermore, it has been submitted that genesis /motive is to be perceived while identifying the allegation and further, application of particular offence. In the aforesaid backdrop, it has been submitted showing an illustration that whenever a pedestrian met with an accident though being a member of scheduled caste, the driver would not be liable for prosecution under the SC/ST (POA) Act. In likewise manner the genesis happens to be over filling of earth and from that passage both the parties would be beneficiary and in the aforesaid background, the occurrence so alleged would not cover ingredients of SC/ST (POA) Act. Apart from this, it has also been submitted that Ranjeet Singh who have been shown to have abused the prosecution party by caste name is found absent from the column of the



accused so prescribed under formal FIR. Therefore, the cumulative effect suggests that instant memo of appeal for anticipatory bail is maintainable.

The learned Special Public Prosecutor opposed the prayer.

Meeting the illustration having made on behalf of appellants if the driver has knowledge that the pedestrian happens to be a member of schedule caste and for that Section 8 of the SC/ST (POA) Act is there to allow presumption, and further the act is done by the driver knowingly, intentionally, covering any one of the ingredients so prescribed under Section 3 of the SC/ST (POA) Act then in that event, certainly there would be an applicability of SC/ST (POA) Act otherwise it will be a simple case of rash and negligent act. In the present case, both the parties are co-villagers and so both the parties are known to each other with proper identity of caste. In terms of Section 8(c) of the Act, the presumption goes against appellant. In the aforesaid background, whether appellants were legally entitled to cut earth even for the purpose of refilling of the passage certainly not and when the land belongs to member of schedule caste, then in terms of Section 3(g) tantamount to an illegal activity infringing legal right of a person belonging to schedule caste.

Consequent thereupon, the submission having made on behalf of appellant that there would not be applicability of SC/ST (POA) Act is found non-entertainable and so, in terms of para-28 of the **Bisheshwar Mishra** (Supra) case, at a glance speaks about presence of ingredients of SC/ST (POA) Act whereupon, in terms of Section 18 of the Act instant memo of appeal for the purpose of grant of anticipatory bail is found non-maintainable and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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