

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.475 of 2017**

Arising Out of PS.Case No. -2 Year- 2015 Thana -MAHNAR District- VAISHALI(HAJIPUR)

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Daroga Chaudhary, son of Nandan Chaudhary, resident of village-Karnauti,  
PS- Mahnar, Dist- Vaishali.

.... .... Appellant

Versus

The State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Nachiketa Jha

For the Respondent : Mr. Sri Sadanand Paswan

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR**  
**TRIVEDI**  
**ORAL ORDER**

6      21-04-2017                      Heard learned counsel for the appellant as well as  
  
learned Spl.P.P..

After hearing the rival submissions as well as going  
through the order impugned, a piquant situation has arisen on  
account of some sort of controversy persisting on record.

From the order impugned dated 24.09.2016 passed  
by learned Sessions Judge, Vaishali at Hazipur relating to A.B.P.  
no. 1844 of 2016, it is apparent that learned lower court had  
perceived that both the parties belonged to same category, that  
means to say, Scheduled Caste. In the aforesaid background,  
institution of F.I.R. of Mahnar P.S. case no. 02 of 2015 would not  
have been under **Section 3(1)(X) of Scheduled Castes &**  
**Scheduled Tribes (Prevention of Atrocities) Act**, however,



registration of the case is there. If aforesaid registration of the case is accepted then in that event, as per observation made by the Division Bench in **Cr.App (SJ) no. 832 of 2016**, the order has to be passed by the Special Judge or Exclusive Special Judge, as the case may be and not by the Sessions Judge after having enforcement of amendment since 26<sup>th</sup> January, 2016. That means to say, registration of case debars the Sessions Judge from entertaining any kind of petition wherein, there happens to be application of **Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act**. Contrary to it, if the observation of the learned Sessions Judge is considered then in that event, the registration of aforesaid F.I.R. would not be under the **Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act**.

Initially, a criminal miscellaneous was filed on behalf of appellant asking for anticipatory bail in terms of Section 438 of Code of Criminal Procedure which has been converted subsequently as an appeal in terms of **Section 14A (2) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act**. Because of the fact that an appeal would not lie against the order of the Sessions Judge who has not been identified as a Special Court or Exclusive Special Court, on account thereof, in view of observations having made by Division Bench in



**Cr.App (SJ) no. 832 of 2016**, the instant appeal would not be entertainable in the eye of law. Simultaneously, if the order impugned is taken into consideration, both parties representing same community would not allow permissibility of the registration of case under **Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act** and that being so, it looks better to convert the instant appeal as a petition under Section 482 of Code of Criminal Procedure for proper adjudication of the validity of F.I.R. wherein the appellant may have appropriate remedy including that of protection of his interest.

Accordingly, it is ordered.

The appellant as well as office are directed to proceed in terms thereof. The aforesaid exercise must be completed within 03 weeks.

**(Aditya Kumar Trivedi, J.)**

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