

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.852 of 2016**

Arising Out of PS.Case No. -203 Year- 2016 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Rajeev Kumar @ Rajiv Kumar, son of Parshuram Prasad, resident of Mirja Gaon,
P.S. and P.O. Sultanganj, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.
2. Bhava Nand Singh, son of Late Rajendra Prasad Singh, resident of Binda Singh
Gali, P.O. and P.S. Sultanganj, District Bhagalpur.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Dhananjay Kumar Tiwary-Advocate
Mr. Baban Kumar-Advocate
For the Respondent/s : Mr. Sadanand Paswan-S.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

Date: 8-03-2017

Appellant/ complainant has challenged the order dated
03.09.2016 passed by the Additional Sessions Judge-2nd-cum-Special
Judge, S.C./S.T. Court, Bhagalpur in connection with Complaint Case
No.203 of 2016 whereby and whereunder the learned lower Court had
dismissed the Complaint Petition under Section 203 of the Cr.P.C.

2. Because of the fact that by an amendment in S.C./S.T.
(Prevention of Atrocities) Act, certain provisions have been
introduced including that of Section 14A whereunder an appeal is
maintainable against an order passed by the lower Court with an
exception that the order should not be an interlocutory order. On
account thereof, considering the provision as enumerated under



Section 4 of the Cr.P.C. providing procedure prescribed under Special Law to be followed irrespective of the provisions enumerated under the Criminal Procedure Code. Therefore, though the dismissal of the complaint is found specially governed under Section 398 of the Cr.P.C. would not come in between nor Section 482 of the Cr.P.C. That being so, the order impugned, as discussed above, in terms of Section 14(A)(1) of the SC/ST (Prevention of Atrocities) Act, which has been made effective from 26.01.2016, happens to be an appealable one. However, the principles so decided while entertaining as well as adjudicating upon the issue will govern it.

3. Before coming to facts of the case, the vivid picturization of the event suggest that on an application having been filed by the appellant/ complainant, S.C./S.T. Bhagalpur P. S. Case No.23 of 2015 was registered under Sections 341, 323, 379, 504, 506 of the I.P.C. as well as Section 3(1)(X) of the S.C./S.T. Act relating to an occurrence allegedly committed on 08.07.2015 whereupon investigation commenced and after concluding the same, final report was submitted. Simultaneously, prosecution report was also submitted against the appellant for an offence punishable under Section 182 and 211 of the I.P.C. However, during midst thereof, protest petition was filed and the learned lower Court after accepting the same, treated the protest petition as Complaint Petition whereupon Complaint Case



No.203 of 2016 was registered. After examination of the appellant/ complainant on Solemn Affirmation, the matter was transferred under Section 192 of the Cr.P.C. for conduction of an enquiry under Section 202 of the Cr.P.C. and after concluding the same, by the order impugned, Complaint has been dismissed, hence this petition.

4. As per allegation so attributed by the appellant/ complainant by way of Complaint petition is that he happens to be posted at B.R.P. at B.R.C., Sultanganj. While he was discharging his official duty on 08.07.2015, Respondent no.2/ accused came at the office and further, accepted before B.E.O. over some sort of interpolation. As B.R.P., he tried to pacify the Bhava Nand Singh, Opposite Party No.2/ accused over which he scolded.

5. On the same day at about 4.50 p.m. after departure of B.E.O., he also proceeded to his house and during course thereof, Bhava Nand Singh/ accused caught hold his collar in the office campus itself and abused him by caste name and then, began to assault him with fists and slaps. He became stunt over which he could not resist. Then thereafter, Bhavna Nand Singh snatched away wrist watch as well as Rs.501/-. He had informed B.E.O., who gave assurance to get the matter materialized within two days, but as he did not care, hence matter was reported.

6. It has been submitted on behalf of appellant that at the



stage of taking cognizance, the learned lower Court was expected to see only a prima facie material without having meticulous examination of the evidence of the witnesses as a trial Court. Apart from this, it has also been submitted that the learned lower Court had dismissed the complaint on flimsy grounds and the reasons whatever been assigned by the learned lower Court, happens to be non-permissible at the present stage, because of the fact that those things were irrelevant for the present consideration.

7. On the other hand, learned Additional Public Prosecutor had fairly submitted that at the relevant moment, the learned lower Court was expected to search out only presence of prima facie case without putting the event under close scrutiny like a trial Court. On account of absence of learned counsel for the respondent, the matter could not be placed at his end.

8. In ***Amanullah and another v. State of Bihar and others reported in 2016 CRI.L.J. 2346*** while answering Point No.2, it has been held:-

Answer to Point No.2

“26. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused- persons after a perusal of case diary,



chargesheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused-persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the chargesheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, offence alleged therein against the accused is made out or not with a view to proceed further with the case.

9. Now, coming to the materials having placed at the end of the appellant, the Solemn Affirmation, statement of the witnesses under Annexure-3, it is evident that there happens to be consistent version with regard to abusing appellant/ complainant by the Respondent No.2/ proposed accused. It has also been perceived that apart from abusing with caste name, he (appellant) was also assaulted by fists and slaps at the end of Respondent No.2. The grounds whatsoever been enumerated in the order impugned is the matter of defence and the same would not be considered at the present moment, more particularly relating to alibi, having presence at the school as well as the reasons for presence of Respondent No.2/ accused at the



scene of occurrence.

10. That being so, the order impugned is set aside.

Appeal is allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	28.02.2017
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