

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1039 of 2016

Arising Out of PS.Case No. -120 Year- 2016 Thana -MAJHAHGARH District- GOPALGANJ

=====

1. Khurshid Miyan son of Late Rajak Miyan
2. Halima Khatoon @ Hasima Khatoon wife of Khurshid Miyan
3. Shabana Khatoon @ Sabana Khatoon Daughter of Khurshid Miyan All
are residents of village - Umar Mathiya, P.S. - Manjagarh, District -
Gopalganj. Appellant/s

Versus

1. The State of Bihar. Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Javed Aslam, Advocate

For the Respondent/s : Mr. Sadanand Paswan, Spl.PP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 25-01-2017 Heard learned counsel for the appellants as well as
learned Special P. P.

2. Though it happens to be a prayer having been made
under Section 438 of the CrPC but in terms of Section 14A
coupled with the finding recorded by the Division Bench relating
to *Bisheshwar Mishra v. State of Bihar* as reported in **2016(4)**
PLJR 1059, instant petition has been filed under the garb of
appeal against order dated 26.10.2016 whereby and whereunder,
prayer of the appellants has been refused.

3. Before appreciating the submissions having been
made on behalf of appellants, it looks pertinent to incorporate
para-47 of the aforesaid judgment which is as follows:-

**“47. For the reasons aforestated, we
determine the fourth issue by holding that an
application, under Section 438 of the Code for the
limited purpose of satisfying the Court that even
on the basis of allegation contained in First
Information Report or Complaint Petition, no
ingredients of commission of any offence under**



the provisions of the Act, are attracted, has to be filed only before an appropriate Court”.

4. It has been submitted on behalf of appellants that there happens to be long delay in filing of the case that too on complaint petition which was sent to the concerned PS for registration, investigation in terms of Section 156 (3) of the CrPC without any explanation. Apart from this, it has also been submitted that there happens to be omnibus allegation. It has also been submitted that occurrence had not been committed within the public view and so, the applicability of SC ST (POA) Act is not at all found applicable in the facts and circumstances of the case.

5. Learned Special P.P. vehemently opposed the submissions and submitted that there happens to be specific disclosure in the complaint petition that complainant was abused by calling her caste name and so, *prima facie*, satisfy the ingredients debarring the appellants to seek privilege of anticipatory bail.

6. Section 3 of SC ST (POA) Act, virtually, deals with the categories wherein the matter applies. (r) (s) thereof satisfy the activity of the appellants so alleged. For better appreciation, the same are quoted below:-

(r) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;



7. Now coming to the allegation, it is evident that all the accused persons raided the house of the informant and further abused by using her caste name, brick-batted, committed mischief as well as also stolen away Rs. 3000/-. It is also apparent that while informant was being dragged, was intervened by the villagers.

8. As per the Division Bench decision as referred above, roving enquiry is not at all permissible, so, the allegation at a glance has to be seen in order to trace out whether a prima facie case is made out or not and if so, the prayer for anticipatory bail would not lie as per Section 18 of the SC ST (POA) Act. In both (R) and (S), it is not the public place rather public view and from the complaint petition, it is evident that there happens to be assemblage of the public at the place of occurrence.

9. That being so, the instant appeal is found non-maintainable. Consequent thereupon, the same is dismissed.

(Aditya Kumar Trivedi, J)

perwez

U		T	
---	--	---	--

