

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.554 of 2017

Arising Out of PS.Case No. -17 Year- 2016 Thana -SC/ST District- GOPALGANJ

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1. Sahamuddin Mian, son of Late Esharoyal Mian
 2. Jakir Mian, son of Late Kamaruddin Mian
 3. Najir Mian, son of Late Kamaruddin Mian
 4. Merajuddin, son of Butai Mian, all resident of village-Fulwariya, P. S.-
Manjagarh, District-Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satyavrat Verma -Advocate
 For the Respondent/s : Mr. Sri Sadanand Paswan-S.P.P.
 For the Informant : Mr. Anil Kumar Chaudhary-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

05 10-04-2017 Heard learned counsel for the appellants as well as
 learned Special Public Prosecutor along with learned counsel for
 the informant.

Informant, a Member of Scheduled caste, while was
 fetching herself from a hand-pipe in front of house of appellants, it
 has been alleged that all the accused variously armed, came,
 forbidden her. However, on her protest, abused by calling her
 caste name and further, assaulted. During course thereof, Jakir
 Mian gave spade blow. When her son Dhannu Ram came in
 rescue, he was assaulted by Najir Mian with *Farsa*. Sobratan
 Khatoon caught hold informant and assaulted with *Lathi-Danda*.
 When her husband Kanhaiya Ram intervened, he was also



assaulted with lathi. Furthermore, after throwing him on ground, Najir Mian tried to extract his eye, however, anyhow saved.

Learned counsel for the appellants has submitted that mere calling a caste name would not be sufficient for registration of a case under S.C./S.T. (Prevention of Atrocities) Act. Because of the fact that informant had not alleged that she was abused by her caste name to disrepute her, on account thereof, instant case should not have been registered under the S.C./S.T. (Prevention of Atrocities) Act. Excluding the same, there happens to be no specific allegation against the appellants and so, it is a fit case wherein appellants should be allowed to avail privilege of an anticipatory bail.

On the other hand, learned Special Public Prosecutor as well as learned counsel for the informant opposed the prayer and submitted that for the present, prayer of the appellants is not at all tenable in the background of the fact that roving inquiry is forbidden as observed by the Division Bench in ***Bisheshwar Mishra and another vs. State of Bihar reported in 2016(4) P.L.J.R. 1058 (D.B.)***.

Before coming to appreciate the submission made on behalf of learned counsel for the appellants', it looks better to incorporate two relevant Sections which, for the present, happens



to be relevant one. ***Section 3(1)(s) of the S.C./S.T. (Prevention of Atrocities) Act and Section 3(2)(v) of the S.C./ S.T. (Prevention of Atrocities) Act.***

“3. Punishments for offences of atrocities.-1. Substituted by Act 1 of 2016, S.4(i), for sub-S.(1) (w.e.f. 26-1-2016). Prior to its substitution, sub-S. (1) read as under:-“(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,- [(1) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

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

(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,-

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property 1. Substituted by Act 1 of 2016, S.4(ii)(a), for “ on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member” (w.e.f. 26-1-2016) [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with



imprisonment for life and with fine;

From plain reading of Section 3(1)(s) of the Act, it is apparent that it does not contain or put an obligation nor there happens to be a requirement that calling by caste name should be to disrepute the Member of a Community rather the only requirement is that abuse by caste name should be within the public view. That means to say, the individual activity beyond public view would not be punishable under Section 3(1)(s) of the Act. Public view means an opportunity to see/ perceive by others. There happens to be no material on record to suggest that there was any kind of infringement, which could have made the public view impossible.

So far Section 3(2)(v) of the S.C./S.T. Act is concerned, that is made applicable whenever an overt act at the end of the accused is committed against a Member of Community attracting punishment more than 10 years which, as the instant case has been registered under Section 307 of the I.P.C. including others, found duly satisfied.

Moreover, at the present moment, Section 6 of the Act is also to be taken note of whereunder the common intention, common object, theme of abetment including other kinds of eventualities have been perceived. The aforesaid eventualities are



the matter of scrutiny of evidence and certainly, would be adjudicateable at the stage of the trial. Moreover, considering the observation having made by the Division Bench in ***Bisheshwar Mishra (supra) case***, more particularly Paragraph-28 whereunder roving inquiry has been forbidden, a prima facie material just on cursory perusal of the allegation, so put forward, has to be taken into consideration and after following the same, it is apparent that there happens to be proper application of S.C./S.T. (Prevention of Atrocities) Act.

On account thereof, instant memo of appeal for anticipatory bail is found deficient one whereupon dismissed.

(Aditya Kumar Trivedi, J)

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