

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49598 of 2013

Arising Out of PS.Case No. -394 Year- 2011 Thana -BAGHA District- WESTCHAMPARAN(BETTIAH)

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1. Kanhaiya Lal Gupta S/O Gopalji Prasad Resident Of Village- Nadawa, Police Station- Chautarawa, District- West Champaran (Bettiah) Petitioner

Versus

1. The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Jitendra Prasad Singh, Adv.

For the Opposite Party : Mr. Binay Kumar Sinha, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

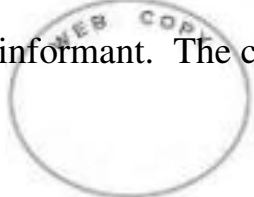
Date: 23-01-2017

Heard the learned counsel for the petitioner and the State.

2. This is application with prayer to quash the order, dated 20.09.2012, passed in Bagaha P.S. Case No. 394 of 2011 whereby cognizance has been taken against the petitioner for offences under Sections 341, 323 and 504 of the Indian Penal Code and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Submission of the petitioner is that a bare perusal of the first information report as well as the material, collected during investigation, would reveal that no occurrence took place within public view, hence, offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is prima facie not made out, the Court below has passed the cognizance order mechanically. His next submission is that the petitioner has stated, on oath, that Ruchi Devi, the wife of the petitioner is Aagan Bari Savika in the same Panchayat where the informant was a Mukhiya. The informant had asked to the wife of the petitioner to pay rupees one thousand every month and on refusal to sent a report against her to the Government. The wife of the petitioner had filed Complaint Case No. 963 of 2011 against the informant of this case.

4. According to first information report of this case, when the informant, Laxman Ram, the local Mukhiya, was working in the residence of the Panchayat Secretary. The first information report named accused persons, including the petitioner entered into the house and committed assault with iron rod. Thereafter, they snatched money from the bag of the informant. The accused, further, caused insult taking cast name of the informant. The case diary reveals that entire occurrence



took place in a room and, as such, not in public view which is a requirement of law under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which reads as follows :

“Whoever not being a member of a scheduled casts or a scheduled tribes intentionally insults or intimidates with intent to humiliate a member of Scheduled Castes or a Scheduled Tribes in any place within the public view.”

5. To the contrary submission of the learned Special Public Prosecutor is that Section 8(c) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, which was brought on the statute in January, 2016, provides for presumptions that the accused was having persona knowledge of the victim or his family, the Court shall presume that the accused was aware of the cast or tribal identity of the victim unless the contrary is proved.

6. In the present case, the occurrence allegedly took place on 15.10.2011, hence, the aforesaid presumption, effective from January, 2016, would not be applicable. On bare perusal of the first information report and the case diary, it is evident that no offence took place in the public view, hence, offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not attracted. Reference may be made to judgment reported in **2005(1) PLJR, 579 (Hari Shankar Sah & Anr. Vrs. State of Bihar & Anr.)** and **2005(2) PLJR, 493 (Brahmdeo & Ors. Vrs. State of Bihar & Ors.)**.

7. Accordingly, the impugned order is **set aside** and this applications stands **allowed**.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
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