

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1309 of 2016

Arising Out of PS.Case No. -87 Year- 2016 Thana -BENIPATTI District- MADHUBANI

- =====
1. Sunita Devi
 2. Leela Devi
 3. Saraswati Devi
 4. Lalita Devi
 5. Bisheshar Mukhia
 6. Shatrughan Mukhia
 7. Kari Mukhia
 8. Basishta Mukhia
 9. Shatrughan Bhandari
 10. Shyam Safi
 11. Sumintra Devi
 12. Sahadeo Mukhia
 13. Ram Chandra Mukhia
 14. Ram Lal Mukhia
 15. Muni Lal Ram
 16. Binde Mukhia

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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with

Criminal Appeal (SJ) No.1334 of 2016

Arising Out of PS.Case No. -87 Year- 2016 Thana -BENIPATTI District- MADHUBANI

- =====
1. Janki Devi @ Janki Dev
 2. Ashok Mukhia
 3. Pano Devi
 4. Reena Devi
 5. Bechan Mukhia
 6. Md. Anwar
 7. Sunil Mahto
 8. Rohit Bhandari

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.1309 of 2016)

For the Appellant/s : Mr. N. K. Agrawal- Sr. Advocate
Mr. Ravindra Kumar Singh-Advocate

For the Respondent/s : Mr. Sadanand Paswan-S.P.P.

(In CR. APP (SJ) No.1334 of 2016)

For the Appellant/s : Mr. N. K. Agrawal- Sr. Advocate
Mr. Ravindra Kumar Singh-Advocate

For the Respondent/s : Mr. Binay Krishna-S.P.P.



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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL ORDER

06 09-03-2017 As appellant no.6, Shatrughan Mukhia, appellant no.7, Kari Mukhia, appellant no.9 Shatrughan Bhandari, appellant no.10 Shyam Safi, appellant no.11 Sumintra Devi, appellant no.13 Ram Chandra Mukhia and appellant no.14 Ram Lal Mukhia of Cr. Appeal (S.J.) No.1309 of 2016 have been arrested as disclosed by the learned counsel for the appellants, on account thereof, instant memo of appeal for anticipatory bail is found dismissed relating to them.

Cr. Appeal (S.J.) No.1309 of 2016 as well as Cr. Appeal (S.J.) No.1334 of 2016 commonly originate out of Benipatti P. S. Case No.87 of 2016, on account thereof, have been heard conjointly and are being disposed of by a common order.

Supplementary affidavit has been filed on behalf of appellants to place before the Court the fact that order impugned has been passed by the Special Court, taken on record.

Heard learned counsel for the appellants as well as learned Special Public Prosecutors.

It has been submitted on behalf of appellants that even considering the allegation on its face in terms of observation having laid down in *Bisheshwar Mishra and another vs. State of*



Bihar reported in 2016(4) P.L.J.R. 1058 (D.B.), the allegation does not attract application of S.C./S.T. (Prevention of Atrocities) Act, hence, instant memo of appeal is maintainable.

To appreciate such submission, it looks pertinent to quote Paragraph-28 thereof:-

“28. We reiterate that while considering the application under [Section 438](#) of the Code, it is not open to the Court to enter into roving inquiry of the veracity of allegations levelled under the Act. It can only look to the First Information Report or the Complaint just in order to prima facie determine whether the ingredients of any offence under the Act at all can be said to have been attracted against the person seeking pre- arrest bail.”

The learned counsel for the appellants submitted that as no allegation is visualizing from plain reading of the written report justifying registration of instant case under S.C./S.T. (Prevention of Atrocities) Act also whereupon the barrier having been prescribed under Section 18 thereof, is not at all found applicable.

Now, coming to facts of the case, it has been submitted that F.I.R. has been registered against unknown



whereupon, it has become a grazing ground for the police to implicate when there happens to be denial at the end of a person to grease palm of the police official. The simple allegation happens to be that person belonging to the group of Janki Devi a Mukhia candidate were making protest for recounting and further, while police force was used to disperse them, it has been alleged that they brandish their masculine power and during course thereof, hurled lathi as well as pelted stone.

On the other hand, learned Special Public Prosecutor opposed the prayer and submitted that complicity of these appellants after being perceived, been arrayed as an accused. Furthermore, the informant apart from being an Executive Officer was also Member of Scheduled Caste and that being so, registration of instant case under the S.C./S.T. (Prevention of Atrocities) Act is found duly justified.

As stated above, there happens to be no whisper that being a Member of Scheduled Caste, the informant was anyway humiliated or some sort of illegal action at the end of appellants on that very score, was taken up.

Consequent thereupon, even after giving prudent approach in terms of direction having laid down under Paragraph-28 of the aforesaid judgment, it is apparent that there happens to



be non-applicability of S.C./S.T. (Prevention of Atrocities) Act and on account thereof, in the facts and circumstances of the case, appellants, **Sunita Devi, Leela Devi, Saraswati Devi, Lalita Devi, Bisheshar Mukhia, Basishtha Mukhia, Sahadeo Mukhia, Muni Lal Ram, Binde Mukhia, Janki Devi @ Janki Dev, Ashok Mukhia, Pano Devi, Reena Devi, Bechan Mukhia, Md. Anwar, Sunil Mahto and Rohit Bhandari**, who are not named in the written report are directed to be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate, Benipatti, Madhubani in connection with Benipatti P. S. Case No.87 of 2016, in event of their arrest or surrender before the learned lower Court in terms of condition as prescribed under Section 438(1) Cr.P.C. after setting aside the order dated 07.10.2016 passed in A.B.P. No.859 of 2016 as well as A.B.P. No.710 of 2016.

Consequent thereupon, both the appeals are allowed.

(Aditya Kumar Trivedi, J)

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