

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1328 of 2016

Arising Out of PS.Case No. -20 Year- 2016 Thana -SC/ST District- PURNIA

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ARUN KUMAR GUPTA, SON OF LATE BHAGWAN GUPTA,
RESIDENT OF MOHALLA - MADHUBANI BAZAR, P.S. K. HAT,
DISTRICT - PURNEA

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar Jha, Adv.

For the informant : Mr. R.P.A, Adv.

For the Respondent/s : Mr. Binay Krishna, SPP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 15-02-2017 Heard learned counsel for the appellant as well as
learned Special Public Prosecutor.

It has been submitted on behalf of appellant that informant happens to be inhabit of filing false case in the background of land dispute implicating even to the extent of sympathizer of Chandan Bhagat. It has also been submitted that appellant is not named in the FIR but, during course of investigation his complicity has been notified from the stage wherefrom the informant had alleged that one person along with Pitto Chaudhary came over motorcycle and both of them abused Mausi of informant by her caste name, assaulted with rod, torn her cloth. When informant intervened into the matter, all of them including appellant assaulted with *khanti*, *lathi* and outraged their modesty by stripping. Furthermore, they directed to pay rupees two lac as rangdari otherwise they will not allow to remain there. On this, it has also been stated that appellant has not been properly identified and so, prayed for grant of anticipatory bail by setting aside the order impugned.



The learned Special P.P. opposed the prayer and submitted that from the averments of the written report it is apparent on its face that an offence punishable under SC/ST (POA) Act is made out whereupon, instant appeal for grant of anticipatory bail is found non-maintainable as is barred under Section 18 of the Act.

In ***Bisheshwar Mishra vs. State of Bihar*** reported in **2016(4) PLJR 1058**, Division Bench had occasion to elaborately dealt with the situation and further in para-28, it has concluded in following way:

“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.”

As indicated the courts are not expected to make roving inquiry in order to appreciate the material and further, to come to a conclusion that no offence under SC/ST (POA) Act is made out. Whatever permitted is, to have a cursory perusal and further, on the basis thereof, to trace out whether an offence punishable under Section SC/ST (POA) Act is made out or not. If so, the bar so prescribed under Section 18 of the Act will substitute.

In the aforesaid background, when the allegation on its face has been gone through, it is evident that the accused persons made house trespass and further, on protest by the prosecution party



abused by caste name and they indulge in different kind of criminal activity stage by stage. Therefore, for the present the allegation allow applicability of SC/ST (POA) Act and that being so, instant appeal is found non-maintainable. Furthermore, from the order impugned, it is evident that appellant presence has duly been perceived during course of investigation and that being so, instant appeal sans merit and is accordingly dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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