

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28202 of 2017

Arising Out of PS.Case No. -150 Year- 2016 Thana -CHANDAN District- BANKA

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1. Pintu Das @ Pintu Kumar, son of Pradeep Das, resident of village-
Khirhartari, Police Station- Chandan, District- Banka.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Mukherjee, Advocate

For the Opposite Party/s : Mr. Sadanand Paswan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

4/ 21-07-2017

Instant application has been filed under Section 438

Cr.P.C. on the ground that cognizance against the petitioner has
been taken only under Section 302/34 Indian Penal Code.

From the First Information Report, it appears that
the case has been registered against the petitioner and other
accused persons for the offence under Section(s) 302/34 Indian
Penal Code and Section 3(2) (v) of the Scheduled Castes &
Scheduled Tribes (Prevention of Atrocities) Act. The police after
investigation submitted charge-sheet against accused Yugal Das
alias Bhutka and did not sent up this petitioner, but the learned
Special Judge after perusing the case diary took cognizance
against this petitioner and other accused persons under Section
302/34 Indian Penal Code by order dated 20.04.2017. Learned
Special Judge also took cognizance against accused, Rinku Roy,



under Section 3(2) (f) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act. Order of cognizance has been annexed as Annexure-2 series.

Learned counsel for the Petitioner has submitted that he has filed bail petition under Section 438 Cr.P.C. because there is no cognizance against the petitioner under the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

This Court is of the view that in terms of Section 190 Cr. P.C., cognizance is taken of offence in a case and not the offenders.

From the order of cognizance dated 20.04.2017, it appears that cognizance has been taken by the learned Special Judge in the case against petitioner and other two accused persons for the offence under Section(s) 302/34 Indian Penal Code and against accused, Rinku Roy, under Section 3(2)(f) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act.

Therefore, in the light of the decision of Division Bench of this Court in the case of ***Bisheshwar Mishra and Ors. Vs. The State of Bihar*** reported in ***2016 (4)PLJR 1058***, this Court is of the view that application under Section 438 Cr. P.C. would not be maintainable, rather, Criminal Appeal will be



maintainable.

In view of such, liberty is given to the petitioner to convert this application into a Criminal Appeal within a period of three weeks.

(Sanjay Priya, J)

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