

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49593 of 2013

Arising Out of PS.Case No. -98 Year- 2012 Thana -MUFFASIL District- AURANGABAD

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1. Jagdish Mehta S/O Late Khelawan Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 2. Bhuneshwar Mehta S/O Kailash Mehta Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad.
 3. Sanjay Mehta S/O Ramchandra Mehta Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 4. Rampukar Sao S/O Deonarayan Sao Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 5. Kashi Mahto S/O Late Khelawan Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 6. Molvi Mahto @ Kamlesh Mahto S/O Late Khelawan Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 7. Guddu Mahto S/O Bishwanath Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 8. Suresh Mahto S/O Late Byas Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 9. Lallu Mahto S/O Late Byas Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 10. Bishwanath Mahto S/O Late Yadu Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
 11. Dharmendra Mahto S/O Jagdish Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad.
 12. Ramchandra Mahto S/O Jagdish Mahto Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
- Petitioners

Versus

1. The State Of Bihar
 2. Bindeshwar Paswan S/O Ramchandra Paswan Resident Of Village- Rangal Bigaha, P.S- Aurangabad (M), District- Aurangabad
- Opposite Parties
- =====

Appearance :

For the Petitioners : M/S Bachanjee Ojha & Binor Kumar, Adv.
For the State : Mr. Jharkhandi Upadhaya, APP 28
For O.P. No. 2 : Mr. Kamendra Prasad Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 16-01-2017

Heard the learned counsel for the petitioners, informant-opposite party no.2 and the State.

2. This is an application for quashing the cognizance, dated 04.09.2013, passed in Tr. No. 716 of 2013 arising out of Aurangabad (M) P.S. Case No. 98 of 2012 passed by the learned Chief Judicial Magistrate, Aurangabad, by which he took cognizance for offence under Sections 147, 341, 323 and 504 of the Indian Penal Code and 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, in which the petitioners are accused on the written report of opposite party no. 2, Bindeshwar Paswan.

3. The allegation in the first information report is that both sides are neighbours and for dispute relating to flowing drain water accused person quarreled with the informant and later on committed abuse and assault on 15.06.2012.

4. Contention of the petitioner is that the bare perusal of the first information report would reveal that no offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is alleged/disclosed in spite of that the case was wrongly registered for the aforesaid offence under section Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, also and after investigation the charge sheet was submitted and, accordingly, by the impugned order cognizance has been taken.

5. Thus, the challenge is confined to the cognizance taken for offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. The record reveals that Ramchandra Mahto, petitioner no. 12, had lodged Aurangabad (Muffasil) P.S. Case No. 97 of 2012 under Sections 147, 323, 307, 379, 504 and 485 of the Indian Penal Code as well as under Section 27 of the Arms Act against the informant of this case and others prior to the present case.

7. The case diary would reveal that the informant in his further statement stated before the police that though dispute was relating to flow of drain water by the side of the road. Initially hot exchange of words took place and subsequently the occurrence of assault wherein Mithilesh Paswan and Parmila Devi, family members of the informant, sustained injury. Mithilesh Paswan and Parmila Devi have also deposed like that. After about three and half months of the occurrence all of sudden statement of witnesses, Bharat Paswan and Govind Paswan, was recorded and these witnesses have stated that the accused person came to her house and abused by taking caste name and committed assault. Similar is the statement of witness, Lalmati Devi. All these witnesses are family members and co-accused or near relations of co-accused of counter case.

8. Section 3(1)(x) of the Scheduled Castes and Scheduled



Tribes (Prevention of Atrocities) Act, 1989, reads as follows :

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

9. Submission of the petitioner is that the informant or the injured witnesses did not support anything regarding offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, the police in-collusion registered the case under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and after three and half months of the occurrence recorded fictitious statement of some witnesses, who claimed that the informant and others were abused by taking their caste name though the informant or injured witnesses and the named eye witnesses have not stated anything regarding any offence committed under the provision is of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

10. Learned counsel for the petitioner has relied on case of **Hari Shankar Sah & Anr. Vrs. State of Bihar & Anr. 2005(1) PLJR, 579**, and submits that in Hari Shankar Sah's case complaint petition revealed that the real dispute between the parties was for non-refund of Rs.40,000/-. The accused had abused by taking caste name as 'sala dusadh', but, the complainant did not substantiate the aforesaid fact in his statement, on oath, or the witnesses examined supported like that and on the basis of the aforesaid fact this Court had quashed the cognizance order for offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and allowed the proceeding in respect of the offences alleged under the Indian Penal Code. In **Brahmdeo Jha & Ors. Vrs. State of Bihar** reported in **2005(2) PLJR, 493** the cognizance order was quashed so far relating to the provisions under the offence of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for the reasons that the abusive word was not used within the public view.

11. In the present case, there is no allegation at all in the first



information report or the earliest statement of the witnesses recorded by the police regarding commission of the alleged offence under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, rather at a belated stage some witnesses have stated before the police regarding the commission of abuse and assault taking caste name. Those witnesses are family members of the informant or of the accused of the counter case. If such, evidences collected during belated stage is allowed to prevail, it will cause nothing, but, abuse of the process of law, which can not be allowed while exercise power under Section 482 of the Criminal Procedure Code by this Court.

12. Accordingly, the impugned order to the extent whereby cognizance has been taken under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is **quashed**.

13. The trial shall proceed for the offence alleged under the Penal Code before the appropriate Court.

14. This application is **partly allowed**.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
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