

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.43 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

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1. Chandeshwari Mandal son of Late Feku Mandal
 2. Kamleshwari Mandal son of Late Feku Mandal
 3. Bideshi Mandal son of Sri Madan Mohan Mandal
 4. Pankaj Kumar @ Pankaj Mandal@ Pappu Mandal
 5. Chandan Mandal son of Late Ras Bihari Mandal
 6. Upendra Mandal son of Late Ras Bihari Mandal
 7. Madan Chand son of Late Harihar Chand
 8. Sadanand Mandal son of sri bindeshwari Chand

All are residents of village- Parwah, P.S Murliganj, Dist- Madhepura.... Appellants/

Versus

State of Bihar

Respondents/-

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Appearance :

For the Appellant/s : Mr. Bhola Prasad
Mr. Mukesh Kumar Jha
For the Respondent/s : Mr. S.A.Ahamed APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date: 05-02-2018

1. Heard learned counsel for the appellants as well as learned Additional Public Prosecutor for the State and perused the record.

2. The appellants have challenged the judgment of conviction and sentence order dated 09.01.2004 passed by learned Special Judge, Madhepura in G.R.Case No. 753 of 1993 arising out of Murliganj P.S.Case No. 42 of 1993.



3. The appellants were convicted for the offences punishable under section 3(i) (iv) and 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 and, accordingly, they have been sentenced to undergo 2 ½ years rigorous imprisonment each for the above stated offences. Both the above stated sentence were ordered to concurrently.

4. The brief facts is that Circle Officer, Murliganj vide his letter no. 303 dated 20.05.1993 gave information to the Officer-in-charge, Murliganj police station to this effect that Khata no.112, Kheasra No. 1198 area 98 decimals of Mouza-Parwa was allotted to Parvinder Ram as the aforesaid lands were surplus lands of the Ceiling proceeding. After allotment, the above stated Parvinder Ram harvested moong crop but the appellant forcibly ploughed the aforesaid lands damaging the mung crop of the aforesaid Parvinder Ram and they themselves planted mung crop and on 16.05.1993 when the allottee Parvinder Ram went to the field and made protest, he was humiliated and abused by the appellants.



5. On the basis of aforesaid written report, Murliganj P.S. Case No. 42 of 1993 was registered and accordingly, formal F.I.R. was drawn up against the appellants. The aforesaid case was investigated by the S.I, Murliganj police station and, subsequently, he submitted charge sheet against the appellants for the offences punishable under the provision of SC/ST Prevention of Atrocities Act 1989. Cognizance of the offence was taken and subsequently, the appellants were put on trial before the Special Judge, Madhepura and they were charged for the offences punishable under section 3(i) (iv) and 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The appellants denied the charges and claimed to be tried. In course of trial, prosecution examined, altogether four witnesses. The statement of appellants were recorded under section 313 of the Cr.P.C in which they reiterated their false implication. The appellants also examined two defence and got exhibited-certified copy of order dated 11.05.1993 passed by Division Bench of this Court in CWJC No. 9755 of 1992 by which the



Division Bench of this Court restrained the authorities from dispossessing the appellants from their lands in question as exhibite-A.

6. Learned court below having scrutinized the evidences available on the record passed the impugned judgment of the conviction and sentence order in the manner as stated above.

7. Learned counsel appearing for the appellants assailed the impugned judgment of conviction and sentence order raising the plea that at the time of alleged occurrence, the Sub-Inspector of police had no authority to investigate the cases registered under the provision of SC/ST (Prevention of Atrocities) Act 1989 but learned trial court failed to take note of the aforesaid fact and also failed to appreciate the aforesaid point in its right perspective. He submitted that no doubt, the State Government issued a notification dated 02.06.2002, making the said notification effective from 31.03.1995, empowering the Sub-Inspector and some other police officials to investigate the offences of



SC/ST (Prevention of Atrocities) Act 1989 but the court below failed to take note of this fact that the occurrence in the present case had taken place in the year 1993 and, therefore, the above stated notification was not applicable in the present case. Secondly, he submitted that the prosecution failed to bring even single chit of paper to show that the lands in question was ever been allotted to Parvindra Ram. He further, submitted that the Division Bench of this Court had already directed the concerned authorities not to dispossess the appellants from the lands in question. He further submitted that there was nothing in the evidence of prosecution to show that the mung crop had been planted by Parvindra Ram and, therefore, the learned court below committed error in convicting and sentencing the appellants.

8. On the other hand, learned Additional Public prosecutor supported the impugned judgment of conviction and sentence order arguing that all the prosecution witnesses have very clearly stated that the land in question was allotted to Parvindra Ram, who had planted mung crop over the



aforesaid lands and the appellants had not only damaged the mung crop and also dispossessed victim Parvindra Ram from the said lands but also abused and humiliated him in full public view.

9. Having heard the above stated contentions of both the parties, I went through the record. It is an admitted position that the present case was investigated by Ram Bilash Ram, the then A.S.I of Murliganj police station and after investigation of the aforesaid case, the said A.S.I submitted charge sheet.

10. Rule -7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1995 says that the offences committed under SC/ST (Prevention of Atrocities) Act 1995 shall be investigated by the police not below the rank of a Dy. Superintendent of Police. Section 9 of SC/ST (Prevention of Atrocities) Act 1989 conferred power to the State Government to this extent that notwithstanding anything contained in the Code or in any other provision of the Act, the State Government may, if it considers it



necessary or expedient so to do, confer power to investigate the offences of SC/ST Act.

11. Furthermore, Section 23 of the Act gives power to Central Government to make rules for carrying out the purpose of the Act by issuance of notification in the Official Gazettee. It is an admitted position that the State Government issued notification on 02.06.2002 empowering the officers below the rank of Dy. S.P to investigate the cases of SC/ST (Prevention of Atrocities) Act 1989 making the aforesaid notification applicable from 31.03.1995 while exercising the power conferred under section 9 of the Act. The Central Government framed SC/ST (Prevention of Atrocities) Rules 1995 which was published in the official Gazettee on 31.03.1995 the Rule-7 of the above stated Rules 1995 empowers the police officer has below the rank of Dy. S.P to investigate the cases of SC/ST Act. The aforesaid rule of Central Government was made applicable from 31.03.1995. Therefore, it is obvious from the aforesaid fact that prior to 31.03.1995, the Sub-Inspector of police was empowered to



investigate the offences of SC/ST (Prevention of Atrocities) Act 1989 and from 31.03.1995 the rule was made applicable that cases of SC/ST (Prevention of Atrocities) Act shall be investigated by police officer not below the rank of Dy. Superintendent of Police. Subsequently, in the year 2002, the State Government framed and published the Rules delegating power to those officers, who are below the rank of Dy. Superintendent of Police to investigate the case of SC/ST (Prevention of Atrocities) Act. Both the State Government and Central Government made their notifications applicable since the year 1995. Nothing has been brought to the notice of this Court to show that prior to 31.03.1995, only the officers having the rank of Dy. Superintendent of Police and above were empowered to investigate the cases registered under SC/ST (Prevention of Atrocities) Act 1989. Therefore, in my view, prior to publication of notification of the State Government as well as Central government, the procedure of investigation as laid down in Cr. P.C was applicable even in the cases of SC/ST (



Prevention of Atrocities) Act .

12. In the aforesaid circumstances, In my view, even if the present case was investigated by a police officer of the rank of Sub-Inspector, then also, there was no illegality as at the time of investigation of present case, the Sub-Inspector of police had jurisdiction to investigate the cases of SC/ST (Prevention of Atrocities) Act 1989.

13. The second point has been raised by learned counsel for the appellant that no document regarding the allotment was brought on the record but in my view, by filing Exhibit-8 the appellants admitted this fact that a ceiling proceeding was going on. However, except the oral statement of prosecution witnesses, there is nothing on the record to show that in the aforesaid ceiling proceeding, the appellant was dispossessed from suit lands because the prosecution did not bring any evidence to show that the appellants had been dispossessed from the suit lands in the ceiling proceeding. Therefore, in my view, the learned trial court ought to have been given benefit of doubts to the appellants.



14. Furthermore, I find that neither the informant nor the investigating officer was examined in this case. None examination of the investigation officer is also fatal to the prosecution case because the investigating officer was most competent witnesses to say about the possession of the parties but the prosecution failed to examine him and, therefore, in my view, the benefit of doubts of none examination of I.O shall go in favour of the appellants.

15. On the basis of aforesaid discussion, the impugned judgment of conviction and sentence order, is hereby, set aside. Accordingly, the appellants are acquitted of the charges giving benefit of doubts to them. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.02.2018
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