

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 246 of 2003

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

- 1. Ramchandra Singh, son of Chandradhan Singh
- 2. Shyam Narain Singh, son of Chandi Singh
- 3. Ramjanam Singh @ Rambhajan Singh, son of Lakhori Singh
- 4. Judagir Prajapati, son of Lal Bihari Prajapati
- 5. Balswarup Singh, son of Bishwanath Singh
- 6. Jagdish Mahto, son of Chaturdhan Mahto
- 7. Jagarnath Mahto, son of Ratna Mahto

All resident of village Etawan, P.S. Mali, District-Aurangabad

- 8. Saryu Ram (Singh), son of Bhaglu Ram, resident of village-Sardiha, P.S. Mali, District Aurangabad.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 257 of 2003

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

- 1. Jagdish Singh, son of late Puran Singh
- 2. Indra Singh, son of late Pargas Singh
- 3. Rajeshwar Singh, son of late Ratan Singh

All are resident of Village-Janatua, P.O. Jaihind Tendua, P.S. Mali, District-Aurangabad

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (SJ) No.246 of 2003)

For the Appellant/s : Mr. Krishan Pd. Singh, Sr. Adv.
Mr. Jharkhandi Upadhyay, Adv.
Mrs. Meena Singh, Adv.
Mr. Saket Kumar Singh, Adv.
For the State : Mr. Sujit Kumar Singh, A.P.P.



(In CR. APP (SJ) No.257 of 2003)

For the Appellant/s : Mr. Yogendra Kr. Singh, Adv.

For the State : Mr. Sujit Kumar Singh, A.P.P.

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

ORAL JUDGMENT

Date: 09-03-2018

1. Both the above stated criminal appeals have arisen out of common judgment of conviction and sentence order dated 26.04.2003 passed by learned Special Judge, S.C./S.T. (Prevention of Atrocities) Act, Aurangabad in G.R. No. 368 of 1992/ Tr. No. 15 of 1995 arising out of Mali P.S. Case No. 03 of 1992 and accordingly, a common judgment is being passed in both the above stated criminal appeals.

2. Heard learned counsel for the appellants as well as learned Additional Public Prosecutor for the State.

3. At the very outset, it is pertinent to note here that during pendency of these appeals, appellant no. 3, namely, Ramjanam Singh @ Rambhajan Singh, appellant no. 4, namely, Judagir Prajapati and appellant no. 8, namely, Saryu Ram (Singh) in Criminal Appeal (S.J.) No. 246 of 2003 died and accordingly, their appeal stood abated.

4. Mali P.S. Case No. 03 of 1992 was lodged on the basis of written report of Circle Officer, Nabinagar on 08.03.1992 for the offence under Section 4/5 of S.C./S.T. (Prevention of Atrocities) Act (in short "the Act") and accordingly, formal F.I.R. was prepared



against the appellants.

5. The Circle Officer, Nabinagar gave written report to concerned officer in charge to this effect that plot no. 104 pertaining to khata no. 50 of village-Itwan Janathua of District Aurangabad was settled to Surajnath Ram and others vide Settlement Case No. 55 of 1986-87 but when the settlees went to cultivate their respective lands, the appellants did not permit them to cultivate the lands and became adamant to assault them. The Circle Officer, Nabinagar made above stated allegation on the basis of report of concerned karamchari and circle inspector.

6. The appellants were put on trial after submission of the charge sheet and taking cognizance in the case and accordingly, they stood charged for the offence punishable under Section 3(i) (iv) of the Act. The appellants denied the charges and claimed to be tried.

7. The prosecution, in course of trial, got examined 19 witnesses and also proved some documents. The statements of appellants were recorded under Section 313 of the Cr.P.C. in which they denied the prosecution case and claimed bona fide land dispute on the basis of their long standing possession over the so-called settled lands.

8. The learned trial court having analyzed the evidences available on the record convicted the appellants for the offences



punishable under Section 3(i) (iv) of the Act and sentenced them to undergo six months rigorous imprisonment and also imposed a fine of Rs. 500/- each and in default of payment of fine, the appellants had to undergo simple imprisonment for one month.

9. Learned counsel appearing for the appellants assailed the impugned judgment of conviction and sentence order arguing that the learned court below committed illegality in convicting and sentencing the appellants particularly, in the circumstance, when all the prosecution witnesses admitted in course of trial that appellants were coming in possession of the disputed land since long and the settlees had never got the possession of the settled lands after so-called settlement. He further submits that the appellants brought documentary evidence on record to show that prior to abolition of Zamindari, the lands in question was settled to them by the ex-landlord and after abolition of Zamindari, the State Government issued rent receipts to the appellants but the learned court below failed to take note of the aforesaid fact and moreover, even if it assumed that appellants did not permit the Government officials to measure the lands and settlees to cultivate the lands, then also, there was bona fide land dispute and the appellants could not have been convicted for the offence punishable under Section 3(i) (iv) of the Act.

10. On the other hand, learned Additional Public



Prosecutor supported the impugned judgment of conviction and sentence order arguing that Section 3(i) (iv) of the Act, specifically, speaks that if a person occupies the lands settled to a member of S.C./S.T. community, the said person commits an offence punishable under Section 3(i) (iv) of the Act. The learned A.P.P. further submits that prosecution proved that the lands in question was settled to the members of Scheduled Castes community and the appellants did not permit to settlees to take possession and cultivate the lands in question and, therefore, the learned trial court rightly convicted the appellants.

11. Having heard the rival contentions of the parties, I went through the record. I find that almost all the prosecution witnesses admitted in course of trial that appellants had been coming in possession of the lands in question since long and furthermore, PW-17 stated that when he went to measure the lands in question, the appellants did not permit him and others to get the lands in question measured. Therefore, it is obvious from the testimonies of prosecution witnesses that appellants were in possession of the disputed lands since long and the concerned authorities without getting possession of the lands in question settled the lands to settlees which was not in accordance with law and moreover, the appellants had every right to defend their possession, if they were going to dispossess from the land illegally and, therefore, in my view, learned counsel for the appellants



rightly submitted that learned trial court committed illegality in convicting the appellants. Furthermore, I find that learned trial court misconstrued the provision of Section 3(i) (iv) of the Act as a result whereof, the trial court came to wrong conclusion.

12. On the basis of aforesaid discussions, both the above stated criminal appeals are allowed and accordingly, the impugned judgment of conviction and sentence order is hereby set aside. The appellants are on bail. They are discharged from the liabilities of their bail bonds.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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