

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43617 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- ARRARIA

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1. Manik Lal Yadav S/O Late Baijnath Yadav Resident Of Village- Barhara, Police Station- Narpatganj, District- Araria

.... Petitioner

Versus

1. The State Of Bihar

2. Birendra Ram S/O Mahanthi Ram Resident Of Village- Barhara, Police Station- Narpatganj, District- Araria

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 16-08-2018

Heard learned Counsel for the petitioner and the learned Counsel for the State.

2. The petitioner seeks quashing of the impugned order dated 1.4.2011 passed by Judicial Magistrate, 1st Class, Araria in Complaint Case No. 3053(C) of 2010, thereby taking cognizance under Sections 147, 323, 354, 379 IPC as well as under Sections 3 and 4 of the Schedule Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The accusation leveled in the complaint filed by the complainant is that the petitioner on 2.9.2010 at 6 AM early morning came to his house and asked for cutting jute crops from his field, but the complainant expressed inability and refused to go because he was suffering from fever, the petitioner again returned back after two hours and enquired why he had not gone to the field for cutting jute crops, but he again expressed his inability, then the petitioner abused him naming his caste and assaulted with leg and fists, when



the complainant's wife turned up to rescue him then she too was abused by the petitioner and assaulted, as a result her blouse and garments were torn and the petitioner committed theft of her payal and two thousand rupees cash.

4. Learned Counsel for the petitioner submits that no offence under Section 3 of the Schedule Caste & Scheduled Tribes (Prevention of Atrocities) Act is made out, even then cognizance has been taken by the Magistrate under the said offence and offence under Sections 354 and 379 IPC are superficial rather super addition. Learned Counsel for the petitioner submits that specific accusation is that the petitioner came to the house of the complainant and abused him, so it was not in public view. In the entire complaint it is not stated that the act of abuse was heard or witnessed by some other persons, only names of witnesses are mentioned in the format of witnesses.

5. However learned Counsel for the State submits that prima facie case being made out for the offences under which cognizance has been taken and there is no merit in this application.

6. Having considered the rival submissions and on perusal of the record the Court does not find it proper to interfere with the cognizance order, however from the accusation itself it is explicit that the complaint does not mention that the complainant was abused in public view or other persons who heard the abuses hurled by the petitioner. Section 3(s) of Schedule Caste & Scheduled Tribes (Prevention of Atrocities) Act defines the offence as alleged in the complaint as follows:-

“If a person not being member of scheduled caste or a scheduled tribe abuses any member of scheduled castes or scheduled tribes by caste name in any place within the public view, it means if the person not belonging to schedule caste or scheduled tribes abuses any person belonging to scheduled caste or scheduled tribe by



taking his caste name in any place may be his house or outside the offence would be made out if the abuse was made within public view.”

“Public View” means the act was viewed by public in large.

“Witness under the Act” is defined under Section 2(e)(d) – A witness is any person who is acquainted with the facts and circumstances, or is in possession of any information or has knowledge necessary for the purpose of investigation, inquiry or trial of any crime involving any offence under this Act and who is or may be required to give any information or make statement or produce any document during investigation, inquiry or trial of such case.

7. However as far as Section 4 of the Schedule Caste & Scheduled Tribes (Prevention of Atrocities) Act is concerned, definitely that offence is not attracted against the petitioner. Section 4 of the Schedule Caste & Scheduled Tribes (Prevention of Atrocities) Act contains provision for punishing a public servant, who is not a member of scheduled caste or scheduled tribe, willfully neglecting his duties required to be performed by him under this Act and Rules and admittedly the petitioner is not a public servant. However the court is not inclined to interfere with the cognizance order as there is accusation of assault and prima facie offence under Section 323 IPC is made out. As far as rest other offences are concerned, the petitioner may raise the issue at the appropriate stage that such offences are not attracted against the petitioner.

With this observation the application stands disposed of.

Snkumar/-

(Arun Kumar, J)

AFR/NAFR	AFR
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