

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25728 of 2017

Arising Out of PS.Case No. -48 Year- 2014 Thana -SAKATPUR District- DARBHANGA

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Santosh Yadav son of Madhav Yadav, resident of village- Gangauli Kanakpur,
P.S.- Sakatpur, District- Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Raj Kumar Paswan son of Sri Paswan, resident of village - Gangauli Kanakpur,
P.S.- Sakatpur, District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kedar Jha, Advocate
For the State : Mr. Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-03-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 18.02.2017 passed by the learned Sessions Judge, Darbhanga in Criminal Miscellaneous No.116 of 2016 by which bail granted by Shri Ravi Pandey, Sub Divisional Judicial Magistrate, Darbhanga in G.R. Case No.2898 of 2014 corresponding to Tr. No.2950 of 2016 arising out of Sakatpur P.S. Case No.48 of 2014 vide order dated 28.10.2016 has been set aside.

There is no dispute to the fact that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act') is a Special Act. In the second proviso to the substituted



Section 14(1) of the Act specific power has been conferred upon the Special Court and the Exclusive Special Court to take cognizance of the offence under the Act directly. The aforesaid provision is exception to the general rule under Section 193 of the Cr.P.C. The second proviso to Section 14(1) of the Act positively and unequivocally provides that the Special Court, which is essentially a Court of Session, shall have power to directly take cognizance of the offence. Hence, the interdict of Section 193 of the Cr.P.C. has been removed by making specific provision in the Special Act.

In view of the substituted Section 14 of the Act, which came into force with effect from 26.01.2016 the police is required to transmit the FIR after institution of the case to Special Court or Exclusive Special Court, as a court of original jurisdiction and for the same reason, the charge-sheet or a complaint is also required to be filed before the Special Court or Exclusive Special Court, as the case may be, for the offences under the Act. Thus, from the date of coming into force of the Amendment Act, 2015, the Court of Magistrate, being not a Special Court or Exclusive Special Court within the meaning of Section 14 of the Act, had no jurisdiction to entertain any application. The above issue has been examined by a Division Bench of this Court in great detail in **Bisheshwar Mishra & Anr. vs. State of Bihar [2016(4) PLJR 1058]**. In view of the fact that the Act was



substantially amended vide Amendment Act, 2015, which came into force with effect from 26.01.2016, the date on which the learned Judicial Magistrate entertained the application for bail i.e., 28.10.2016, he had no jurisdiction to pass any order.

As a matter of fact, the order passed by the learned Magistrate, which has been set aside by the learned Sessions Judge was a nullity in the eye of law and, thus, no illegality can be found with the order passed by the learned Sessions Judge whereby he has set aside the order passed by the learned Magistrate.

Accordingly, the application, being devoid of any merit, is dismissed.

Md.S./-

(Ashwani Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.03.2018
Transmission Date	31.03.2018

