

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22954 of 2015

Arising Out of PS.Case No. -5 Year- 2015 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Rajveer Singh Dahiya, General Manager, Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, P.S. Kotwali, District- Patna
 2. B. Ashok, Chairman (Director, Marketing In-charge), Indian Oil Corporation Ltd., Indian Oil Bhavan, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai
- Petitioner/s

Versus

1. The State of Bihar
 2. Deputy Labour Commissioner, Patna Division, Patna
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amlesh Kumar Verma, Advocate
For the Opposite Party/s : Mr. Kumar V. Naryan, APP
For the Intervener : Mr. Ray Saurabh Nath, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 01-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.01.2015 passed by the Chief Judicial Magistrate, Patna, in Complaint Case No.5(C-2)/2015 by which the learned Magistrate has taken cognizance against the petitioners for the offence under Section(s) 25(T), 25(U) [wrongly mentioned in the impugned order as 26(U)] & 29 of the Industrial Disputes Act, 1947.

2. The prosecution case made in the complaint dated 27.12.2014 lodged by the Deputy Labour commissioner, Patna Division, is that in terms of the award dated 11.03.1983, passed by the Labour Court, Patna in Reference Case No.14 of 1980 and order



dated 04.04.1985 passed by the Hon'ble Supreme Court of India in SLP No.5086 of 1985, the management of Indian Oil Corporation Ltd. was required to implement the order of the Labour Court. The Officer in this connection (Sri C.D. Singh) submitted one application before the Labour Commissioner, upon which the office of the Labour Commissioner, vide departmental letter No.762 dated 05.03.2014 and letter No.1305 dated 09.05.2014, organized a meeting at the level of Labour Commissioner for implementation of the award by the management and after having failed in that process, the prosecution has been filed against the accused persons under Section 25(T), 25(U) [wrongly mentioned in the impugned order as 26(U)] and 29 of the Industrial Disputes Act, 1947. The Labour Department, vide its letter Nos. 3612 and 3613 dated 04.12.2014, has authorized Deputy Labour Commissioner (Opposite Party No. 2), Patna to file the present complaint against the management of the Indian Oil Corporation Ltd.

3. Learned Chief Judicial Magistrate, Patna has taken cognizance in the matter on the aforesaid complaint under the relevant sections of Industrial Disputes Act by the impugned order.

4. Heard learned counsel for the petitioners and learned APP for the State as well as for the Opposite Party No.2. Also heard counsel for the Intervener-Officer.



5. During hearing of this application, one Interlocutory Application bearing I.A. No.1953 of 2016 has been filed on behalf of the Officer concerned, namely, Sri C.D. Singh under Section 482 Cr.P.C. making prayer to allow him to be impleaded as Opposite Party-intervener this application. This Court although did not pass any final order on the aforesaid interlocutory application during hearing of this application, but allowed the counsel, who had filed I.A. No.1953 of 2016 on behalf of Officer, C.D. Singh, to make argument in the case to understand the correct position of the matter and reserved the judgment along with order to be passed on the aforesaid interlocutory application.

6. Counsel for the petitioners has submitted that prosecution case is based on *non-est* grounds as the award dated 11.03.1983, for non-implementation of which instant case has been filed, was challenged by the management of Indian Oil Corporation Ltd. in writ application bearing C.W.J.C. No.5877 of 1983 before this Hon'ble Court which quashed the impugned award by its order dated 30.03.1988. The Special Leave Application was filed by the Officer concerned, which was dismissed by the Hon'ble Supreme Court. The Opposite Party No. 2 has filed the instant complaint by making concealment of all these facts although both were part of record of the Opposite Party No.2.



7. Counsel for the petitioners further submits that the Hon'ble Court while setting aside the impugned award dated 11.03.1983 vide CWJC No.5877 of 1983 & CWJC No.4377 of 1984 held in para 20 of the judgment that **Labour Court was not justified in ordering promotion of Sri C.D. Singh from Grade A to Grade – B and from Grade – B to Grade-C, which was not and cannot be a function of the Labour Court. The impugned award has, therefore, to be quashed and set aside. The Hon'ble Court was further pleased to direct the management in the aforesaid judgment to consider the workman's case for promotion to higher scale of pay of Rs.1025-1625/- on the basis of his service records for the period during which he became entitled for such promotion.** As such, direction to consider the Officer's claim for promotion given by the Hon'ble Court was on its own motion and that was not part of the award dated 11.03.1983, which was quashed by the Hon'ble Court.

8. Counsel for the petitioners further submits that in pursuance of the direction given in CWJC No.5877 of 1983 to consider workman's case for promotion, the management of Indian Oil Corporation Ltd. formed a three member committee to consider the case of the Officer, Sri C.D. Singh. By letter dated 07.10.1988, it was communicated to Sri C.D. Singh, that he was not found suitable



for promotion from Grade A to Grade B. The workman Sri C. D. Singh preferred SLP bearing No.12375-76 of 1988 against the order dated 30.03.1988 of Hon'ble Patna High Court. During pendency of aforesaid SLP, management of Indian Oil Corporation Ltd., produced the letter dated 07.10.1988 before the Hon'ble Supreme Court and informed the Court that the case of Officer Sri C.D. Singh for promotion, as per the direction of the Hon'ble Patna High Court, was considered by a three member committee and that he was not found suitable for promotion. The Hon'ble Supreme Court dismissed the SLP filed by the workman on 18.01.1989 with the observation that without prejudice to the rights of the petitioner, the letter dated 07.10.1988 could be challenged before the High Court. Xerox copy of the order of Hon'ble Supreme Court dated 18.01.1989 has been enclosed as Annexure-3.

9. The concerned Officer, thereafter, challenged the rejection of his claim of promotion by the management, as communicated vide letter dated 07.10.1988, before the Hon'ble Delhi High Court in WP No.2641 of 1990. The issue raised in the writ application filed before the Hon'ble Delhi High Court had a altogether different cause of action which was disposed off vide order dated 15.09.2004, wherein, Sri C.D. Singh was permitted to withdraw the writ application with liberty to challenge the



correctness of service record and to advance contention that average and below average remark amounted to a major penalty. However, the Hon'ble Delhi High Court made it clear that Sri C.D. Singh cannot again agitate the issues that have been raised in the aforesaid writ petition.

10. Counsel for the petitioners further submits that once the industrial dispute referred to Labour Court came to an end with the quashing of Labour Court's award by this Hon'ble Court, none of the provisions of Industrial Disputes Act is applicable. Consequently the Labour Commissioner has no jurisdiction in the matter to lodge the complaint. Counsel for the petitioners further submits that it was manifest from the record before the Labour Commissioner particularly in the light of the Corporation's letter dated 02.04.2014 and the documents enclosed therein that there was no award in existence, the same having been quashed by this Hon'ble Court, the Labour Commissioner went ahead with sanctioning of prosecution for non-implementation of the award and directed the Opposite Party No. 2 to file the instant complaint. Opposite Party No. 2 filed the present complaint concealing the factum of setting aside award dated 11.03.1983 as well as on basis of misrepresentation of facts.

11. The Opposite Party No. 2 instead of disclosing the



facts relating to setting aside of award by this Court in the judgment passed in CWJC No.5877 of 1983 on 30.03.1988 and order of Hon'ble Supreme Court in SLA (Civil) No.5086 of 1985 has referred to an earlier order dated 04.04.1985 of the Hon'ble Supreme Court which was an interim order in the appeal filed by the Indian Oil Corporation Ltd. The SLP was later on converted into Civil Appeal No.1257 (NL) of 1985 filed against an initial order passed by this Hon'ble court holding the writ application CWJC No.5877 of 1983 to be not maintainable. The Supreme Court, however, allowed the appeal by its judgment dated 13.08.1986 setting aside the order of this Hon'ble Court and remanding the matter for hearing on merits thereby restoring CWJC No. 5877 of 1983. Thereafter, final judgment was passed by this Court in CWJC No.5877 of 1983, which has been enclosed as Anneuxre-2 to the Cr. Misc. Application.

12. Counsel for the petitioners has further submitted that reliance by the Opposite Party No.2 on the interim order of the Hon'ble Supreme Court passed on 04.04.1985 is totally misconceived as the said order became inconsequential once final judgment was passed in Civil Appeal No.1257 (NL) of 1985 on 13.08.1986. Reference to the aforesaid interim order is intentional misrepresentation of true facts, which clearly disclose that the Supreme Court by its order passed in Civil Appeal No.1257 (NL) of



1985 on 13.08.1986 had remanded the matter to this Court for hearing on merits. The Hon'ble Court after fresh hearing the CWJC No.5877 of 1983, has set aside the award of Labour Court dated 11.03.1983, the very award in respect of which present prosecution has been launched.

13. Counsel for the Petitioners has finally argued that had the interim order of Hon'ble Supreme Court dated 04.04.1985 passed in SLP (Civil) No.5086 of 1985 (Annexure-7) remained in force, concerned Officer would have right to move the Hon'ble Supreme Court for enforcement of any alleged right flowing from by way of a contempt petition or any other mode. But, there is no evidence of any such proceedings taken by such concerned Officer. In fact, interim order dated 04.04.1985 was inconsequential particularly when a final order had been passed by the Hon'ble Supreme Court on 13.08.1986 in favour of Indian Oil Corporation.

14. Counter Affidavit has been filed on behalf of the Opposite Party No.2. Besides narrating the facts, as stated above, main contention raised by the Opposite Party No.2 is that after remand of the case, Hon'ble Patna High Court has been pleased to quash the award by judgment passed in CWJC No.5877 of 1983 dated 30.03.1988, but since earlier three member Bench of Hon'ble Supreme Court had stayed 1st part of the award while remanding the



matter, on principle of Doctrine of Merger, the 1st part of the award was stayed and became final. It has further been submitted that since 1st part of the award dated 11.03.1983 speaks that Sri C. D. Singh should be allowed the pay scale of Rs.1025 to 1625/- from the date of his junior were promoted to that scale of pay i.e. with effect from 30th December, 1970, remained operative in view of order dated 04.04.1985 passed in SLP (Civil) No.5086 of 1985, therefore, benefits of award made in favour of Sri C. D. Singh vide Reference Case No.14 of 1980 was to be accorded to him under the provisions of the Act. In this view of the matter and taking into account the representation filed by Sri C. D. Singh, the Deputy Labour Commissioner, Patna, was directed by letter no.212 dated 17.01.2013 to take necessary action and submit a report on the issue. Notice was issued to Director, Marketing, Indian Oil Corporation, vide letter dated 05.03.2014 to appear on 24.03.2014. The Manager (Employee Relation) Indian Oil Corporation Ltd. submitted show cause on 03.04.2014, wherein, it is submitted that there is nothing for Indian Oil Corporation to implement the award dated 11.03.1983 and showed their reluctance to abide by the order of the Hon'ble Court. Thereafter, it was decided to initiate the prosecution under the provisions of the Act. Therefore, under Memo No.3613 dated 04.12.2014, a government notification was issued in exercise of



power conferred under Section 34 of the Act and Deputy Labour Commissioner, Patna, was directed to file complaint against the management of Indian Oil Corporation Ltd. in the Court of the Chief Judicial Magistrate, Patna, for the offences punishable under Section(s) 25(T), 25(U) and 29 of the Act. Xerox copy of the aforesaid Memo No.3613 dated 04.12.2014 is annexed as Annexure-E to the Counter Affidavit. It is further mentioned in the Counter Affidavit that vide Letter No.3722 dated 12.12.2014, prosecution paper was made available to the Deputy Labour Commissioner, Patna, who vide letter No.4874 dated 27.12.2014 filed petition in the Court of the Chief Judicial Magistrate, Patna, which was registered as Complaint Case No.5(C-2) of 2015 and after institution of complaint case, the Deputy Labour Commissioner, Patna, informed to the department under Letter No.102 dated 09.01.2015 (Annexure-F and G to the Counter Affidavit). The Chairman of Indian Oil Corporation Ltd. and the General Manager of Patna Division have been made Opposite Parties by designation and not by name as reference by the Government of Bihar was in the name of Indian Oil Corporation Ltd. The Chairman was appointing authority of Sri C. D. Singh and he was working under the administrative control of Divisional Manager, Patna, at that time. They were responsible for implementing the award under Section 32 of the provision of



Industrial Disputes Act. It is further mentioned in the Counter Affidavit that the management violated orders of the Hon'ble Supreme Court as well as award passed by the Labour Court. Therefore, accused have made themselves liable to be prosecuted for such offences under the Act.

15. I. A. No.1953 of 2016 has been filed on behalf of the Officer, namely, Sri C. D. Singh, making prayer to allow him to intervene in this case, which has been filed by the petitioners for quashing the order of cognizance passed by the learned Chief Judicial Magistrate, Patna, for non-implementation of the award of the Labour Court in the light of the order of Hon'ble Supreme Court dated 04.04.1985 passed in SLP No.5085 of 1985 in favour of applicant Sri C D Singh. Therefore, he is a necessary party to be impleaded in this case.

16. Supplementary Affidavit has been filed on behalf of the Officer, Sri C. D. Singh, making almost similar statement as made in the Counter Affidavit of the Opposite Party No.2.

17. The petitioners have filed reply to I.A. No.1953 of 2016 filed on behalf of the Intervener-Officer, Sri C. D. Singh, stating that grievance of the Officer has already been redressed by the Hon'ble High Courts as well as Hon'ble Supreme Court and also by the Indian Oil Corporation Ltd. Therefore, seeking intervention in



a petition filed by the officials of Indian Oil Corporation against malafide prosecution launched by the State Authorities is not justified in law as well as on facts.

18. Having considered rival contention of the parties, as stated above, this Court finds that initially concerned Officer, Sri C. D. Singh, was appointed as Sales Officers in Indian Oil Corporation. He was dismissed from service as Sales Officers on 03.09.1969. A case was registered before the Labour Court, Ranchi, under Section 26 (2) of Bihar Shops and Establishment Act, which was allowed on 23.09.1973, and petitioner was ordered to be reinstated with full back wages from the date of his dismissal. Indian Oil Corporation challenged the aforesaid order, but the same was dismissed by Hon'ble Supreme Court. Sri C. D. Singh was reinstated as Sales Officer on 03.05.1974, but he did not get Grade B scale of 1025-1625/-. Reference Case No.14 of 1980 was instituted on 25.09.1980 and by award dated 11.03.1983 passed by the Labour Court, Patna, Sri C. D. Singh was directed to be given scale of Rs.1025 -1625/- from the date of his juniors got it and (ii) should be promoted from Grade B to Grade A with benefits of revision in pay scale of those grades. Indian Oil Corporation Ltd. challenged the aforesaid order by filing CWJC No.5877 of 1983 in Hon'ble Patna High Court. The writ petition was dismissed by order dated



24.01.1985. SLP was filed by the management before the Hon'ble Supreme Court vide SLP No.5086 of 1985 granting stay only to the second part of the award and not to the first part of the award. SLP was finally allowed by Hon'ble Supreme Court on 13.08.1986 and remanded the matter to Hon'ble Patna High Court to dispose of CWJC No.5877 of 1983 afresh. The Hon'ble Patna High Court allowed the writ application CWJC No.5877 of 1983 with CWJC No.4377 of 1984 and quashed the impugned award dated 11.03.1983 passed by the Labour Court, Patna, in Reference Case No.14 of 1980 by judgment dated 30.03.1988. The Hon'ble High Court while setting aside the award was pleased to direct the management of the Indian Oil Corporation Ltd. to consider the workman's case for promotion to higher scale of pay of Rs.1025-1625/- on the basis of his service records for the period during which he became entitled for such promotion. Management of the Indian Oil Corporation considered the case for promotion of the Officer concerned in compliance of the aforesaid order of Hon'ble Court and a three members committee was constituted to consider the case of the concerned Officer, Sri C. D. Singh and by letter dated 07.10.1988, Sri C. D. Singh, was communicated that he was not found suitable for promotion from Grade A to Grade B. Thereafter, the workman preferred SLP No.12375-76 of 1988 against the order dated



30.03.1988 passed by Hon'ble Patna High Court in CWJC No.5877 of 1983 with CWJC No.4377 of 1984. During pendency of aforesaid SLP, management of Indian Oil Corporation Ltd., produced the letter dated 07.10.1988 before the Hon'ble Supreme Court and informed the Court that the case of Officer Sri C.D. Singh for promotion, as per the direction of the Hon'ble Patna High Court, was considered by a three member committee and that he was not found suitable for promotion. The Hon'ble Supreme Court dismissed the SLP filed by the workman on 18.01.1989 with the observation that without prejudice to the rights of the petitioner, the letter dated 07.10.1988 can be challenged before the High Court. Thereafter, Officer concerned challenged rejection of his claim by management communicated by letter dated 07.10.1988 before Hon'ble Delhi High Court in WP (C) No.2641 of 1990. The Delhi High Court disposed off the said writ petition by order dated 15.09.2004 by giving permission to the Officer, Sri C. D Singh, to withdraw the writ application with liberty to challenge correctness of service record and to advance his contention that average and below average remarks amount to a major penalty. The Hon'ble Delhi High Court made it clear in the order that Sri C. D. Singh, cannot again agitate the issue that had been raised in the aforesaid writ application.

19. In this manner, from the judgment of the Hon'ble



High Court, it is apparent that while setting aside the award of the Labour Court dated 11.03.1983 passed in Reference Case No.14 of 1980, the Hon'ble Court was pleased to direct the management to consider the workman's case for promotion to higher scale of pay of Rs.1025-1625/- on the basis of his service records for the period during which he became entitled for such promotion by judgment dated 30.03.1988. The aforesaid judgment was affirmed by judgment dated 18.01.1989 of the Hon'ble Supreme Court passed in SLP No.12375-76 of 1988, by which SLP preferred by the Officer concerned was dismissed.

20. Main contention of the Opposite Party No.2 as well as the Officer concerned, as made in the Counter Affidavit, is that if stay of first part of the award has been granted by larger Bench of the Hon'ble Supreme Court in SLP No.5086 of 1985 by order dated 04.04.1985, it cannot be opened subsequently after remand of the case to the Hon'ble Patna High Court, which has been pleased to quash the award by judgment dated 30.03.1988 passed in CWJC No.5877 of 1983 and on the principle of Doctrine of Merger, first part of the award is stayed and became final.

21. This Court is unable to accept such contention of the Opposite Party No.2 as well as the Officer concerned. Earlier order dated 04.04.1985 passed by the Hon'ble Supreme Court in SLP



No.5086 of 1985 was an interim order in appeal filed by the Indian Oil Corporation Ltd. Aforesaid SLP was later on converted to Civil Appeal No.1257 (NL) of 1985, which was filed against initial order passed by Hon'ble High Court holding that CWJC No.5877 of 1983 to be not maintainable. The Hon'ble Supreme Court allowed the appeal by judgment dated 13.08.1986 setting aside the order of this Hon'ble Court and remanded the matter for hearing on merit thereby restoring CWJC No.5877 of 1983. Therefore, reliance of the Opposite Party No.2 on an interim order of the Hon'ble Supreme Court passed on 04.04.1985 is totally misconceived. The said order has become inconsequential once final judgment was passed by Hon'ble Supreme Court in Civil Appeal No.1257 (NL) of 1985 on 13.08.1986.

22. In this respect, it is relevant to mention the judgment of Hon'ble Supreme Court in the case of *Prem Chandra Agarwal vs. UP Financial Corporation* reported in (2009) 11 *Supreme Court Cases* 479, wherein, Hon'ble Supreme Court has held that it is well settled principle that once a final order is passed, all earlier interim orders merge into the final order and the interim order ceases to exist.

23. It is admitted position that Hon'ble Patna High Court after remand of the matter by Hon'ble Supreme Court by order



passed in CWJC. No.5877 of 1983 with CWJC No.4377 of 1984 has set aside the impugned award dated 11.03.1983 passed in Reference Case No.14 of 1980 by the Labour Court, Patna. The Hon'ble Patna High Court has mentioned in para 22 of the judgment passed in CWJC. No.5877 of 1983 with CWJC No.4377 of 1984 that *the result is that this application is allowed and the impugned order is hereby set aside. However, in view of the findings that C. D. Singh has the right for being considered for promotion to the next higher scale of pay with effect from 30.12.1970, I direct the petitioner Corporation to consider his case for promotion to the higher scale of pay of Rs.1025-1625/- on the basis of his service records for the period during which he became entitled for such promotion.*

24. In this manner, from the aforesaid judgment of Hon'ble Court dated 30.03.1988, it is clear that the impugned award has been set aside by the Hon'ble Court. The Hon'ble Court was, however, pleased to direct the management to consider his case for promotion to the higher scale of pay of Rs.1025-1625/- on the basis of his service records for the period during which he became entitled for such promotion. The management had considered his case for promotion and by letter dated 07.10.1988 the Officer concerned, Sri C. D. Singh, was communicated that he was not found suitable for promotion from Grade A to Grade B. The workman, Sri C. D. Singh,



filed SLP bearing No.12375-76 of 1988 against the order dated 30.03.1988 of Hon'ble Patna High Court passed in CWJC No.5877 of 1983. During pendency of SLP No.12375-76 of 1988, the management of Indian Oil Corporation Ltd. produced the letter dated 07.10.1988 before the Court and informed the Court that case of Officer, Sri C. D. Singh, for promotion as per direction of Hon'ble Patna High Court was considered by a three member committee and he was not found suitable for promotion from Grade A to Grade B. The Hon'ble Supreme Court dismissed the SLP filed by the workman on 18.01.1989 with observation that without prejudice to the rights of the petitioner, the letter dated 07.10.1988 can be challenged before the High Court.

25. Thereafter, the petitioner challenged the rejection of his claim of promotion by the management, as communicated vide letter dated 07.10.1988, before the Hon'ble Delhi High Court in WP No.2641 of 1990, which was, ultimately, withdrawn by the Officer concerned with liberty to challenge the correctness of service record and to advance contention that average and below average remark amounted to a major penalty. The Hon'ble Delhi High Court made it clear in aforesaid judgment that Officer, Sri C.D. Singh, cannot again agitate the issues that have been raised in the aforesaid writ petition.

26. Therefore, in the aforesaid facts and



circumstances of the case, instant prosecution launched by the Opposite Party No.2 against the management of Indian Oil Corporation Ltd. is totally misconceived as there was no award in existence at the time of filing of instant case against the petitioners. The said award was already quashed by this Court and also upheld by Hon'ble Supreme Court. The Hon'ble Patna High Court by judgment dated 30.03.1988 allowed the writ application CWJC No.5877 of 1983 with CWJC No.4377 of 1984 and quashed the impugned award dated 11.03.1983 passed by the Labour Court, Patna, in Reference Case No.14 of 1980. The Special Leave Application was filed by the Officer concerned which was dismissed by order dated 18.01.1989 passed in SLP No.12375-76 of 1988.

27. Therefore, impugned order passed by the learned Court below is not in accordance with law.

28. In view of such, impugned order dated 23.01.2015 passed by the Chief Judicial Magistrate, Patna, in Complaint Case No.5(C-2)/2015 along with entire criminal proceeding against the petitioners is hereby quashed.

29. This application is, accordingly, **allowed.**

Interlocutory Application No.1953 of 2016:

30. This Interlocutory Application filed on behalf of the Officer concerned under Section 482 Cr P.C. was heard by this



Court during hearing of this application only to ascertain the correct facts of the case.

31. This Court has heard the counsel for the Officer concerned during final hearing to understand the correctness of the dispute between the parties.

32. Interlocutory Application was filed under the provision of Section 482 Cr. P.C. to implead the Officer concerned as Opposite Party in this case. This Court has heard Opposite Party No.2 during hearing, as stated above, to ascertain the real dispute between the parties.

33. Hearing the counsel for the Officer concerned does not mean that the Court has allowed Intervener Petition filed on behalf of the Officer concerned.

34. This Court is of the view that Intervener Petition is not maintainable in the criminal proceeding under the provision of Section 482 Cr. P.C.

35. Therefore, Interlocutory Application No.1953 of 2016 is hereby dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	15-05-2018
Uploading Date	06-08-2018
Transmission Date	06-08-2018

