

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3901 of 2018

Arising Out of PS. Case No.-131 Year-2016 Thana- RAGHUNATHPUR District- Siwan

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Lalbabu Prasad @ Lalbabu Bhagat, Son of Raj Kishore Bhagat @ Raj Kishore Prasad, resident of Village- Dighwaliya, P.S.- Raghunathpur, District- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Dhananjay Baitha Son of Dhupan Baitha, resident of Village- Dighwalia, P.S.- Raghunathpur, District- Siwan.

.. ... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ashok Kumar, Adv
For the Respondent/s : Mr. Smt Usha Kumari No-1,SPP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-12-2018

Heard learned counsel for the parties.

By the impugned order dated 26.03.2018 passed in Sessions Trial No.43 of 2018, the learned Special Judge, Siwan has taken cognizance against the appellant and others for offences under Sections 147,148,149,341,323,324,307 and 504 of the Indian Penal Code as well as under Section 3(i)(x) of SC/ST Act.

According to FIR, the appellant and other accused person are co-villagers of the informant. The informant alleges that as soon as he alongwith his



nephew Chandan Baitha reached near the house of the appellant by the side of the road, the named accused person started abuse by taking caste name and committed assault against the informant and others causing fracture of head of Chandan Baitha and other injuries.

The impugned order has been passed after considering the material in the case diary.

The challenge is on the ground that on the alleged date of occurrence, the appellant was not there rather he was on his duty, which has come during the investigation.

It is well settled that defence of alibi cannot be looked into at this stage.

Second ground is that there is case and counter case and in view of counter case, chances of malafide prosecution cannot be ruled out.

The existence of counter case cannot be a ground to disbelieve the FIR when the injury report is there in respect of the injured with allegation supported by other witnesses.

In view of the aforesaid conclusion, I am not



inclined to interfere with the impugned order.

Accordingly, this appeal stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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