

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8983 of 2015

Arising Out of PS. Case No.-301 Year-2008 Thana- SC/ST District- Vaishali

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1. Dharmendra Choudhary
 2. Bhim Choudhary, Both are Sons of Chandrama Chaudhary, Resident of village - Balesara, P.S. Uchkagaon, District - Gopalganj, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jiut Baitha, Son of Laxman Baitha, Resident of village - Balesara, P.S. Uchkagaon, District - Gopalganj

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shafiur Rahman, Advocate

For the Opposite Party/s : Mr. Rajiv Nayan, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 26-06-2019

Heard learned counsel for the parties.

2. The petitioners are accused in connection with SC/ST P.S. Hajipur Case No. 301 of 2008 registered under Sections 341, 342, 323, 504/34 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the “SC/ST Act”). After investigation, the police submitted charge sheet against the petitioners and the learned court below took cognizance on 21.12.2009 of the offences under Sections 341, 323, 504 of the Indian Penal Code and Section 3(1)(x) of the SC/ST Act.



3. The petitioners challenged the order of cognizance before the learned Sessions Judge, Gopalganj in Cr. Revision No. 126 of 2010. The matter was heard by the learned 1st Additional Sessions Judge, Gopalganj and by order dated 18th July, 2014, the criminal revision was dismissed on merit.

4. Learned counsel for the petitioners submits that there is unexplained delay in lodging of the FIR, inasmuch as, the occurrence allegedly took place on 11.09.2008 and the FIR was lodged on 26.09.2008. He further submits that the FIR does not disclose that the occurrence took place at any public place. Hence, the offence under the SC/ST Act as alleged is not made out.

5. According to First Information Report, the petitioners and others came near the Darwaja (gate) of the informant and started abusing by taking caste name. Thereafter, the accused persons including the petitioners dragged the informant out and tied him with a tree and assaulted him. When the wife and brother of the informant came for rescue, they were also abused and assaulted by the petitioners and others.

6. The cognizance order cannot be challenged on the ground of delay in lodging of the FIR. This issue can be examined only at the stage of trial on production of cogent evidence that any prejudice was caused to the accused due to delayed lodging of the



FIR. The averment in the FIR clearly shows that the occurrence took place at the public place. Presence of public is not necessary at the time of occurrence, rather the place should be a place where in the ordinary course of movement any public can see the occurrence.

7. Moreover, this application under Section 482 Cr.P.C. is in the nature of second criminal revision which is not permissible in view of the specific bar under sub-section 3 of Section 397 Cr.P.C. The law is well settled that when the statute bars anything specifically that cannot be entertained under Section 482 Cr.P.C., therefore, there is not merit in this criminal miscellaneous application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
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