

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1833 of 2019

Arising Out of PS. Case No.-24 Year-2017 Thana- ASHOK PAPER MILL District-
Darbhanga

1. MD. JUBAIDAR @ MD.JUBAIR @ JUBAIR @ JUBAIYAR son of Ayub
2. Abdul Hannan @ Hannan son of Late Md. Israr @ Israil
3. Md. Salman @ Salman @ Salman Ahmad son of Late Md. Israr @ Israil
4. Samruddin @ Md. Samsuddin son of Md. Faruque @ Faruque
5. Md. Jamil Akhtar son of Md. Idrish
6. Md. Manjar Ali @ Sayed Manjar Ali @ Md. Manjar son of late Sabir Hussain, all residents of village-Chandanpatti, PS-Ashok Paper Mill [Pator O.P.], Distt-Darbhanga.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Chaitu Paswan son of late Chulai Paswan R/O village-Chandan Patti, Chanchal Nagar, PS-APM [Pator O.P.], Distt-Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kedar Jha, Adv

For the Opposite Party/s : Smt Usha Kumari No-1, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 01-02-2019 Heard learned counsel for the petitioners as well as
learned APP.

2. Gone through the order impugned. It has been submitted at the end of petitioners that no case under SC/ST (POA) Act is made out, because of the fact that the allegation whatever been attributed did not satisfy the ingredients of Section 3(1)(r)/3(1)(s) of SC/ST (POA) Act. In likewise manner, it has also been submitted that prosecution suffers from inherent lacuna as well as it also happens to be malicious prosecution in the background of the fact that at an earlier occasion the same



informant had instituted APM PS Case No. 19/2017. It has also been submitted that after investigation police has submitted final report observing that the allegation has been found untrue. Furthermore, it has also been submitted that from contents of the FIR of case no. 19/2017, it is evident that there was dispute of *Shia* and *Sunni* and for that, police was deputed at that very place. In the presence of police, such kind of activity no one could imagine. In the totality of event, it has been submitted at the end of learned counsel for the petitioners that it is a fit case wherein order of cognizance dated 16.09.2017 passed in connection with Ashok Papper Mill PS Case No. 24/2017, GR No. 46/2017 pending before Special Judge, SC/ST (POA) Act, Darbhanga should be set aside.

3. Learned APP opposed the submissions made on behalf of petitioners and submitted that the order impugned is in accordance with law whereupon, did not require interference.

4. It is needless to say that at the stage of summoning of accused, only *prima facie* case has to be seen. In likewise manner, after submission of police report, the Magistrate is not bound to accept the same as three options are found available before him (a) to accept, (b) to differ and (c) to direct further investigation. In this case, the learned lower court had differed



with the opinion and to substantiate the same, has elaborated that from the further statement of the informant along with statement of witnesses, Laxman Paswan and Dularchand Paswan, he found *prima facie* material whereupon, summoned the accused. Wrong mentioning of Section at the present juncture will not cause hard-ship nor will eclipse the proceeding as up to judgment in terms of Section 216 CrPC, the Court is fully competent enough to amend the charge in accordance with materials available on the record. More particularly, so far present scenario is concerned, Section 3, (2)(ii) and 3(iv) is applicable in the facts and circumstances of the case.

5. However, the same will be subject to appreciation at the stage of framing of charge. Consequent thereupon, the order impugned did not attract interference, whereupon, the instant petition is rejected.

(Aditya Kumar Trivedi, J)

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