

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1639 of 2018**

Arising Out of PS. Case No.-74 Year-2015 Thana- ASHOK PAPER MILL District-
Darbhanga

-
1. Md. Rumi @ Md. Sami S/o Md. Zafar Imam,
 2. Md. Guddu S/o Md. Zafar Imam,
 3. Md. Afsar @ Md. Ansar, S/o Md. Zafar Imam,
 4. Md. Anwar @ Md. Ambar, S/o Md. Zafar Imam. All are R/o village-
Chandanpatti, P.S.- Ashok Paper Mill (Pator O.P.), District- Darbhanga.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Harmindar Paswan S/o Late Prem Paswan, R/o Village- Chandanpatti, P.S.-
Ashok Paper Mill (Pator O.P.), District- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Iqbal Asif Niazi, Advocate
For the Opposite Party/s	:	Mr. Nawal Kishor Prasad, Advocate
For the State	:	Mr. Shyam Kumar Singh, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 15-10-2019

Heard learned counsel for the parties.

2. The petitioners are accused in connection with Ashok Paper Mill Police Station Case No.74 of 2015 registered under Sections 147, 341, 323 and 504 of the Indian Penal Code as well as under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. After investigation of the case, the Police submitted charge sheet against the petitioners for the offences under Sections 147, 149, 341, 323, 504, 506 and 354A of the Indian



Penal Code as well as under Sections 3 (i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, the learned Magistrate on the basis of material available took cognizance only for the offences under Sections 323, 341, 147 and 504 of the Indian Penal Code by order dated 08.03.2016.

4. The informant challenged the aforesaid order of cognizance before the learned Sessions Judge, Darbhanga in Criminal Revision No.381 of 2016 on the ground that offence alleged under the provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is also made out and the learned Magistrate has acted with illegality in not taking cognizance for the offences under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The revisional court vide order dated 04.08.2016 allowed the criminal revision and remitted back the matter to the court concerned for fresh order according to law, as the material in the case diary was sufficient for taking cognizance under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also.

5. Thereafter, the impugned order dated 01.06.2017 has been passed, whereby cognizance has been taken consistent with



the First Information Report and Police report submitted under Section 173 of the Code of Criminal Procedure.

6. Learned counsel for the petitioners has challenged the impugned order on the ground that on the date of fresh cognizance order dated 01.06.2017, the new amendment under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was already enforced with effect from 26.01.2016 and under Section 14 of the Act, Special Courts were already there under the Act and only Special Court was competent to take cognizance of offences under the Act in view of the proviso of Section 14 (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Therefore, the order of cognizance passed by the learned Magistrate is without jurisdiction. Learned counsel has placed reliance on the judgment of this Court in *Bisheshwar Mishra versus The State of Bihar*, reported in **2016 (4) PLJR 1058**.

7. Learned counsel for the informant-opposite party No.2 does not dispute the aforesaid legal proposition.

8. Section 14 (1) of the Act reads as follows:-

“For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette,



establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act”.

9. No doubt the order of the learned Magistrate dated 01.06.2017, whereby cognizance was taken for the offence alleged to be committed under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is without jurisdiction in view of the law prevailing on the date for the reason that Section 14 (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act specifically empowers the Special Court/Exclusive Special Court to directly take cognizance for the offence under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. However, the record reveal that on the very next date i.e. on 29.06.2017, the learned Magistrate transmitted the



record to the court of learned Special Judge having jurisdiction over the matter. This Court is not aware whether the record is lying before the learned Special Judge as it is or the learned Special Judge has already proceeded with the trial. In both the situations, the learned Special Judge is competent to apply its mind. Cognizance is nothing but application of judicial mind to proceed with the criminal case. Reference may be made to the case of *Anil Saran versus The State of Bihar and Another*, reported in *1996 (1) PLJR (S.C.) 5*. If the case would have been pending as it is, the learned Special Judge is competent enough to apply its mind and proceed with the trial. If the learned Special Judge has already proceeded with the trial, it would be assumed that he has taken cognizance after application of judicial mind. Thus, in my view, no case of failure of justice is made out, if the impugned order is not interfered with.

10. Section 460 of the Code of Criminal Procedure is specific that if any Magistrate not empowered by law to take cognizance of an offence under Clause (a) or Clause (b) of sub-Section (1) of Section 190 of the Code of Criminal Procedure erroneously in good faith takes cognizance, the proceeding shall not be set aside merely on the ground of his not being so empowered.



11. In this case, the learned Magistrate was not empowered to take cognizance, however, he acted in a good faith and soon after cognizance and knowledge of the fact that the case is cognizable and triable by the learned Special Court, the learned Magistrate transmitted the record to the learned Special Court. Therefore, I am not inclined to interfere with the impugned order and this application is *disposed* of accordingly.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	17.10.2019
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