

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21979 of 2017

In
CRIMINAL APPEAL (SJ) No.489 of 2017

Arising Out of PS. Case No.-298 Year-2016 Thana- MUFFASIL District- West Champaran

Sonu Dicruz @ Aloysius Dicruz @ Sannu Dicruz Son of late Elias Jhon
Dicruz @ Victon Dicruz Resident of Mohalla Christian Quarter, P.S. Bettiah
Town, District Bettiah, West Champaran.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Birendra Kumar Singh

For the Opposite Party/s : Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 25-04-2019 Heard learned counsel for the petitioner as well as learned
APP along with learned counsel for the O.P. No.2.

2. This petition has got some sort of peculiarity but, the basic feature still survives and that needs proper consideration. In order to proper appreciation of the submission, matter in controversy, salient feature be properly noticed. With certain allegation having levelled at the end of the O.P. No.2, Muffasil P.S. Case No.298/2016 has been registered under Sections 147, 353, 384, 457, 380, 504 of the IPC and 3(i)(iv)(v)(x) of SC ST (POA) Act. The aforesaid case based upon Complaint Petition No.1028(c) of 2016 having been filed by the O.P. No.2, Anita Demta, which was sent to the concerned police station in accordance with Section 156(3) of the Cr.P.C. While the case was under investigation, prayer for anticipatory bail was made at the end of the petitioner before the learned lower court



which was rejected under ABP No.1264/2016 and consequent thereupon, initially Cr. Appeal (SJ) No.489/2017 was filed which, during course of consideration was converted as Cr. Misc. No.21979/2017 at the request of petitioner in order to redressal of the grievances, as institution of case under SC ST (POA) Act has been challenged. While the matter remained pending, charge sheet has been submitted after completing investigation followed with order of cognizance and that being so, I.A. No.1597/2017 has been filed asking for permission to amend the prayer and thus, the order of cognizance dated 27.01.2017 passed by CJM, Bettiah, in Mufassil P.S. Case no.298/2016 has been put under challenge.

3. The allegation whatsoever been alleged that O.P. No.2/complainant belongs to weaker section of the society being member of scheduled caste and in the aforesaid background accused asked for ten lacs as rangdari otherwise, threatened to vacate the house. She had complained to the Superintendent of Police, Bettiah under receipt no.1202 dated 25.02.2016 on that very score. it has further been alleged that while she had gone to Delhi along with her family members, the accused persons with the help of antisocial elements raided her house, broken locks and took away the articles (listed therein). On being informed, she returned back immediately from Delhi and while she was staying, the accused came along with antisocial elements and began to abuse, detract, degraded her being a member of scheduled tribe. Also threatened to vacate the house



otherwise she will be murdered.

4. It has been submitted at the end of the learned counsel for the petitioner that the institution of the case coupled with order of cognizance under relevant provisions are illegal in the background of the facts that:

(a) both the parties are a member of scheduled tribe, basically.

(b) Later on they both adopted Christianity wherein there happens to be no casteism.

5. Once they have renounced there earlier status, and followed the Christianity and then, in that circumstance, there would not be applicability of SC ST (POA) Act. If that part is not accepted as, irrespective of change of religion the original status would not change then, again both the parties happen to be member of scheduled tribe, scheduled caste and then also, there would not be applicability of SC ST (POA) Act. So, in any view of the matter the registration of the case followed with investigation as well as order of cognizance are not at all in accordance with law.

6. On the other hand, learned counsel for the O.P. No.2 has submitted that mere conversion would not de-recognized their status but, submitted that whether the petitioner happens to be a member of scheduled caste or not is a question which could not be decided at the present moment in summary manner while exercising power under Section 482 of the Cr.P.C.



7. Learned Spl. P. P submitted that in case both the parties are found to be a member of scheduled caste then, in that circumstance, there would not be applicability of SC ST(POA) Act.

8. Certainly, at the present stage when the matter relates with examination of propriety of the order, the court finds the issue duly furnished in the background of issue having been so raised, that means to say proper identification of both sides vis-a-vis applicability of SC ST (POA) Act. However, this exercise could be properly done at the end of the learned lower court because of the fact that the court has to see its competence in order to proceed with the trial legally and for that, the parties are directed to appear before the learned lower court with their specific plea which, the learned lower court decide on priority basis more particularly to justify the applicability of SC ST (POA) Act. At the present juncture, the learned counsel for the petitioner has submitted that up till now petitioner has not surrendered before the learned lower court and so, the learned lower court is directed to allow the petitioner the privilege of provisional bail on surrender till matter is decided conclusively and then thereafter, will pass appropriate order in accordance with law, even relating to bail.

9. Because of the fact that criminal court has got no power to reviewed or recall its own order, hence the order of cognizance dated 27.01.2017 passed by CJM, West Champaran at Bettiah, relating to Mufassil P.S. Case No.298/2016 is hereby



quashed. Petition is allowed. Matter is remitted back to the learned
lower court to decide the issue after hearing both sides.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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