

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2749 of 2018

Arising Out of PS. Case No.-10 Year-2017 Thana- SC/ST District- Rohtas

Nanhu Ram Son of Late Gulab Chand Ram, resident of Village- Baradhi,
Police Station- Agrer, District- Rohtas.

... .. Appellant/s

Versus

1. Kameshwar Tiwari Son of Late Shivdal Tiwari, Resident of Mohalla- Raj Colony, Ward No. 9, P.S.- Sasaram Model, District- Rohtas.
2. The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Yogendra Kumar Singh, Adv
For the Respondent/s : Mr.Binay Krishna, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 29-01-2019 Heard learned counsel for the appellant, learned
counsel appearing for OP No.1 as well as learned APP.

2. Appellant/informant is aggrieved by an order dated
25.04.2018 passed by 1st Additional Sessions Judge-cum-Special
Judge-(SC/ST), Rohtas at Sasaram in connection with SC/ST
Dehri (Rohtas) PS Case No. 10/2017 whereby and whereunder
police report has been accepted.

3. Putting an allegation against OP No.1 by the
appellant/informant that on account of demand of daily wage
which was due as he was engaged in white washing of the
building belonging to the OP No.1 and for that, when he had



gone to the place of OP No.1 on the alleged date and time of occurrence, OP No.1 began to abuse, assaulted him with shoe, directed him to sit down, forced him to gulp the spit as well as also pushed him from the staircases whereupon, SC/ST Dehri (Rohtas) PS Case No. 10/2017 was registered, investigated upon and then, after concluding the same, the police submitted final report divulging the same to be not true which has been accepted by the order impugned, hence this appeal.

4. In order to stress over the procedural law, it has been submitted at the end of learned counsel for the appellant that under Chapter IV-A, rights of victims and witnesses have been identified whereunder Section 15A specifically deals with the same and further, attracting Sub-Section 3, it has been submitted that before acceptance of the final report, it was incumbent upon the learned lower court to inform the appellant/informant by way of serving notice upon him. It has further been submitted that in ***Gangadhar Janardan Mhatre v. State of Maharashtra*** as reported in (2004) 7 SCC 768 , the Hon'ble Apex Court reiterated the earlier direction that informant is to be noticed before acceptance of the final report. Because of the fact that the learned lower court has violated not



only the mandate of law rather direction of the Hon'ble Apex Court consequent thereupon, the order impugned is fit to be set aside.

5. The learned counsel for the OP No.1 has submitted that whatever been argued at the end of learned counsel for the appellant happens to be contrary to the factual aspect. From the order-sheet of the learned lower court, it is apparent that notice had already been issued against the appellant and in spite of the same, he failed to appear and so, there was willful negligence at his end which, deprives him to seek the relief so sought for. That being so, the instant appeal is fit to be dismissed.

6. Before amendment of Section 14 by way of Act No.1 of 2016, there was no provision prescribed for taking cognizance by the Special Court or Exclusive Special Court whereupon, the trial before amendment was to cross through different stages, that means to say, registration of case at the level of the lowest strata of the cognizance taking criminal court followed with cognizance and then, commitment in terms of Section 209 of the CrPC and then, the matter to reach before the Special Court. After amendment, the Special Court or Exclusive Special Court whichever may be, has been vested with the power of cognizance and by such activity, the procedure up-to



commitment has been decapitated. Though, under SC/ST (POA) Act, there happens to be no provision prescribed for applicability of the CrPC wherever the Act is silent in terms of Section 4(2) as well as Section 5 of the CrPC, it is abundantly clear that though the field occupied by the Special Act has properly been recognized but, the gray area having been left under the Special Act was to be governed by the CrPC. That being so, only those areas have got shadow under the umbrella of CrPC where Special Act is silent. That means to say, identifying the power of cognizance under Section 14 of the Special Court's Act is indicative of the fact that applicability of Section 190 of the CrPC, has been given by and so, it is a matter of concern whether the principle so governing the issue while exercising the power under Section 190 CrPC, will be considered to be applicable in similar way while exercising the power under Section 14 of the SC/ST (POA) Act. In order to properly appreciate the same, it has to be borne in mind that irrespective of acknowledging the cognizance taking power neither mode of registration of a case/investigation/submission of police report has been laid down nor with regard to complaint case. That means to say, right from Section 154 CrPC to Section 173 CrPC, the same is found properly eclipsed by the CrPC and



in likewise manner, with regard to Sections 200, 202, though at the present moment, application of 192 CrPC is also to be properly acknowledged but, not under present controversy, hence is left out.

7. The intention of the legislature is also to be seen. Vesting of power of cognizance upon the Special Court or Exclusive Special Court has got a purpose, only to ward off the delay, that means to say, avoidance of procedural law right from the stage of taking of cognizance to the stage of commitment. That being so, it could not be said that the Special Court has to indulge in different mode of appreciation during course of taking of cognizance and so, whatever principle has been laid down by the Hon'ble Apex Court, during course of passing of order of cognizance under the guise of Section 190 of the CrPC, the same principle would govern the present episode.

8. Right from *Abhinandan Jha* as well as *Raghuvansh Dubey* and thereafter, it has been settled at rest by the catena of decisions that whenever police report is submitted, the Magistrate is not at all bound to accept the same rather, the Magistrate has got option to choose (a) to accept the same, (b) to differ therefrom (C) to direct further investigation. During midst thereof, due to callousness or partiality or



incompetency whichever may be at the end of the I.O and after being apprehensive thereof, although there happens to be absence of specific provision under the CrPC, but by precedence, protest petition has been allowed and in the aforesaid background, firstly, wherever there was presence of protest petition, it was directed, more particularly, in ***Bhagwant Singh v. Commissioner of Police*** as reported in ***AIR 1985 SC 1285*** that informant be noticed so that, in his presence, the subsequent event should materialize so that he be able to sail with the protest-cum-complaint petition in case, the police report is accepted.

9. However, the aforesaid eventualities have been expanded by the Hon'ble Apex Court in ***Gangadhar Janardan Mhatre' case (supra)*** as relied upon by the learned counsel for the appellant, by observing as follows:-

“11. As decided by this Court in Bhagwant Singh's case [(1985)2 SCC 537], the Magistrate has to give the notice to the informant and provide an opportunity to be heard at the time of consideration of the report. It was noted as follows:

"The Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.."

12. Therefore, the stress is on the" issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as



indicated in Bhagwant Singh's case (supra) the right is conferred on the informant and none else.

10. This happens to be the principle relating to proper identification of interest of informant whenever final report is submitted under the CrPC in consonance with Section 14 (Proviso). Now coming to the Section 15A (3) of the Act, as submitted by the learned counsel for the appellant, informant was to be informed whereupon, it was obligatory on the part of the court to inform the informant. For better appreciation Section 15A (3) is quoted hereinbelow:-

“(3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.”

11. From plain reading of the sub-Section-3, it is evident that the informant has been given a right to access in the court proceeding and for that, the Special PP or the State Government has been put under obligation to inform the informant, it does not lay obligation on the part of the court to inform the informant rather. That being so, the submission raised on behalf of appellant, that under Section 15A(3) of the SC/ST (POA) Act, it was the court who has to inform the



informant, could not be accepted as it happens to be conflict with the desirability.

12. As observed hereinabove that the order of cognizance in terms of Section 14 happens to be at par with the exercise of power in accordance with Section 190 of the CrPC and further as per judicial pronouncement referred hereinabove, it was obligatory on the part of the court to notice the informant and for that, order-sheet has been looked into. From the order-sheet dated 15.11.2017, the next date was fixed for appearance of the informant and for that, the O/C was directed to issue notice upon the informant. On subsequent date i.e. on 15.02.2018 as there was failure at the end of office, it was again directed and as per margin, the notice was issued under DB No. 139 dated 20.02.2018. Then thereafter, three dates i.e. 06.03.2018, 26.03.2018 and 14.04.2018 were passed over without having the appearance of appellant.

13. In the aforesaid factual aspect when the memo of appeal has been gone through, at para-5, it has been submitted that from the entire order-sheet of the 1st Additional Sessions Judge, it is evident that there was no valid service of notice. Neither the appellant has specifically controverted that he had not received the notice nor he challenged the endorsement



having in the margin of the order-sheet that notice was issued under DB No. 139 dated 20.02.2018.

14. In the aforesaid facts and circumstances of the case, the instant appeal sans merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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