

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1425 of 2019

Arising Out of PS. Case No.-249 Year-2017 Thana- NAUTAN District- West Champaran

Sheikh Samsad, male, aged about 12 years, represented through his father namely Mohammad Neyaz Alam @ Sheikh Neyaz, Resident of Village - Sekhaua, P.S.- Jagdishpur, Distt - West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through The Home Secretary, Govt. of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Tirhut Range, Muzaffarpur.
4. The Deputy Inspector General of Police, Bettiah, West Champaran.
5. The District Magistrate, West Champaran at Bettiah.
6. The Superintendent of Police, West Champaran at Bettiah.
7. The Officer In Charge, Nautan (Jagdishpur), Police Station, District - West Champaran.
8. Lalita Devi Wife of Dhuran Ram Resident of Village - Shekhauna, P.S.- Jagdishpur, Distt - West Champaran.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Sanjay Kumar No.7-Advocate Mr. Anant Kumar Mishra-Advocate
For the Respondents	:	Mr. Saroj Kumar Sharma-AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 23-10-2019 Heard learned counsel for the petitioner.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 15.09.2018 passed by the learned Additional District and Sessions Judge, 1st, Bettiah, West Champaran in Trial No.298 of 2018 arising out of Nautan (Jagdishpur) P. S. Case No.249 of 2017 whereby differing with the police report, after taking cognizance of the offences under



Sections 341, 323, 504 read with 34 of the Indian Penal Code and Section 3(1)(r) and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 the petitioner Sheikh Samsad has been summoned to face trial.

3. It is submitted by the learned counsel for the petitioner that the order impugned has been passed by the learned Additional Sessions Judge mechanically and without judicial application of mind.

4. He submitted that the Court below was of course not bound by the conclusions arrived at by the police after receiving the police report under Section 173(2) of the Code of Criminal Procedure. It had full jurisdiction to differ with the conclusion of the police and direct the petitioner, who was not sent up by the police for trial to appear and face trial. However, in the present case, while passing the order impugned, the Court below completely shut its eyes to the materials available on record and passed a cryptic order summoning the petitioner.

5. He submitted that the order impugned was passed mechanically without application of judicial mind. The Court below failed to notice the fact that in the F.I.R. itself, the age of



the petitioner was given by the informant as 10 years. It also failed to appreciate that in Column-12 (XV) of the police report it was specifically stated that in course of investigation and supervision, involvement of the petitioner, a minor in the commission of the offence, was not found true.

6. On the other hand, a preliminary objection has been raised by the learned counsel for the State regarding maintainability of the present application. He has contended that in view of Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, against the order impugned, an appeal would be maintainable before this Court and in that view of the matter, this application under Articles 226 and 227 of the Constitution of India would not be maintainable.

7. At this stage, Mr. Sanjay Kumar, learned counsel for the petitioner seeks leave to convert the present application into an appeal under Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

8. Leave is granted.

9. Let steps in this regard be taken by the learned counsel for the petitioner as early as possible, preferably within a week after Diwali holidays.



10. Since the case relates to a minor child, aged about 10 years only, the petitioner would be at liberty to make a prayer for early hearing of the appeal before the Bench where it would be listed.

(Ashwani Kumar Singh, J)

vikash/-

U		T	
---	--	---	--

