

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78285 of 2019

Arising Out of PS. Case No.-129 Year-2018 Thana- CHOUTARWA District- West
Champaran

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1. PRAMOD PATEL Son of Shri Paramhansh Patel Resident of Village - Siktaur, Police station - Chautarwa, District - West Champaran.
 2. Lal Bahadur Patel @ Lal Bahadur Kumar Patel Son of Vijay Patel Resident of Village - Siktaur, Police station - Chautarwa, District - West Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Brij Kishor Mishra

For the Opposite Party/s : Mr.Usha Kumari 1

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-01-2020

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 02.03.2019 passed by learned 1st Additional District & Sessions Judge-cum-Speical Judge, Bettiah, West Champaran, in Trial No. 46 of 2019 arising out of Chautarwa P.S. Case No. 129 of 2018, by which learned court below took cognizance against the accused-petitioners for the offence punishable under Sections 341, 323, 504, 506/34 of the Indian Penal Code and Section 3(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

Informant in his written complaint has alleged that on 07.06.2018 at about 7:30 pm while he was returning to his



home from Bettiah he received phone call from his co-villager Pramod Patel who asked him as to where he is at present and thereafter when he stated that he was returning home from Bettiah the call was disconnected and thereafter when he made a call from his another mobile in which there is provision for recording then he came to know about the conspiracy and at about 9:30 pm when he reached Pokhra, he saw two motorcycle borne miscreants who tried to kill him but somehow he managed to escape and when he, his father along with co-villager went to the house of Pramod Patel to enquire then Pramod Patel abused him and his father threatened that they will be killed. Informant has recorded the conversation of both the accused-petitioners.

It has been submitted on behalf of the petitioners that they are innocent and have been falsely implicated in this case and no offence under Section 3(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out as petitioner has not stated in this written complaint that the petitioners have abused him by his caste name.

On the basis of evidence collected during investigation, case diary and chargesheet filed against petitioners, the court below found *prima facie* case to be made out against the



petitioners and took cognizance for the offence punishable under Sections 341, 323, 504, 506/34 of the Indian Penal Code and Section 3(i)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and issued summons for their appearance to face trial.

At the stage of taking cognizance the court has to form opinion on the basis of materials available on record whether a *prima facie* case is made out against the accused or not. Relevancy, adequacy and sufficiency of evidence cannot be considered at the stage of taking cognizance. Cognizance is taken against offender and whether any charges are made out under SC/ST Act is to be considered at subsequent stage at the time of framing of charge where accused is given opportunity to address the court that there is no material or evidence collected against the petitioner – accused and the necessary ingredients in order to constitute offences under SC/ST Act is absent and such plea is available to the accused-petitioner at the stage of discharge/framing of charge. Charges can be altered any time before judgment.

The defence of the accused cannot be considered at the time of taking cognizance. This Court in its inherent jurisdiction cannot substitute its view regarding sufficiency or adequacy of material before the court below at the time of taking cognizance



and issuance of summons against accused as same is within exclusive domain of trial court, as such I am not inclined to interfere with the order dated 02.03.2019 passed by learned 1st Additional District & Sessions Judge-cum-Special Judge, Bettiah, West Champaran.

However, the petitioners will be at liberty to raise all the issues raised before this Court as well as other points available to them in accordance with law at subsequent stage i.e. at the time of framing of charge.

Subject to the aforesaid observation and liberty, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2020
Transmission Date	22.02.2020

