

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86745 of 2019

Arising Out of PS. Case No.-86 Year-2008 Thana- NAVINAGAR District- Aurangabad

Ravindra Panday S/o Gobardhan Panday Resident of Village and Post-
Rajbria (Kala), P.S.- Nabinagar, Dist- Aurangabad.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Avanish Kumar Singh, Advocate
For the Opposite Party/s : Mr.Usha Kumari 1, Sp.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 10-01-2020 Heard learned counsel for the petitioner and learned
Special Public Prosecutor for the State.

Petitioner, in the present case, is aggrieved by and dissatisfied with the order dated 16.10.2019 passed by learned 1st Additional Sessions Judge – cum – Special Judge (POCSO & SC/ST), Aurangabad, in S. Tr. No. 162/2010/023/2010, G.R. No. 1350/2008, arising out of Nabinagar P.S. Case No. 86/2008.

Learned counsel for the petitioner at the outset submits that earlier the petitioner had moved this court against the order dated 22.10.2011 passed by learned Special Judge (SC/ST) rejecting the petition of the petitioner under Section 228 of the Code of Criminal Procedure. Pointing out to the order dated 23.03.2012 passed in Cr. Misc. No. 1744 of 2012 (Annexure '2'), learned counsel submits that vide said order a learned coordinate Bench of this court had while refusing to



comment upon the sufficiency or insufficiency of the prosecution evidence though did not interfere with the order but made an observation that so far as application of Section 3(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act of 1989') is concerned, the First Information Report does not disclose the application of the said section of the Act of 1989, and further observed that it is in the domain of learned Special Judge to consider the aforesaid point and to decide as to whether any charge is made out against the petitioner for the offence under the provisions of Act of 1989 or not. It was observed that the learned Special Judge should consider the point at the time of framing of the charge. The application preferred by the petitioner was however dismissed.

It is submitted that at this stage the learned Special Judge has once again passed the order dated 16.10.2019 on the petition preferred by the petitioner under Section 228 Cr.P.C. which is impugned in the present application. Learned counsel submits that the learned Special Judge has, while rejecting the petition of this petitioner, not considered the submission of the petitioner, therefore the impugned order suffers from non-consideration of the materials available on the record.



This court has gone through the impugned order and noticed that the learned Special Court has went through the materials collected by the Investigating Officer and upon perusal of the records particularly the case diary, the learned court below noticed that in paragraph '25' the injury report of the informant is present and in paragraph '46' of the case diary a supplementary injury report is there showing that the informant had sustained fire-arm injury on his left leg which was simple in nature. The learned Special Court found from the materials that according to the investigation report the petitioner had fired on the informant twice. In the said view of the matter, sufficient materials have been found to frame charges under Section 341 and 307 of the Indian Penal Code as well as Section 3(2)(v) of the Act of 1989.

Contention of learned counsel for the petitioner that the F.I.R. does not disclose commission of any offence under the provisions of Act of 1989 is not acceptable at this stage for the purpose of setting-aside of the impugned order inasmuch as this court finds that Section 3(2)(v) of the said Act reads as under:

“3(2)(v). commits any offence under the Indian Penal code (45 of 1980) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine.”



This court has noticed above that on earlier occasion also the petitioner had moved this court and vide Annexure '2' to the application a learned coordinate Bench of this court had dismissed the petition though certain observations were made. At this stage, this court is satisfied that the learned court below has duly applied it's mind and on the basis of the materials available on the record a decision has been taken to frame the charges under the aforesaid provisions of the Indian Penal Code read with the provision of the Act of 1989. The consideration required to be given at the time of framing of charge has been fully adhered to and complied with by the learned court below. No ground for interference in the impugned order is, thus, made out.

This Application is dismissed.

(Rajeev Ranjan Prasad, J)

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