

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4337 of 2019

Arising Out of PS. Case No.-72 Year-2018 Thana- ALIPUR District- Gaya

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Prabhat Shankar @ Jhanti Sharma, Son of Nand Kishore Singh, Resident of village Kespa, P.S. – Alipur, District Gaya

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Harendra Manjhi son of Chandradev Manjhi resident of village Kespa, Police Station Alipur and District Gaya.
- 3.

... .. Respondent/s

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Appearance :
For the Appellant/s : Ms. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Mr. Binay Krishna, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

9 02-07-2021 Heard learned counsel for the appellant and learned Special Public Prosecutor for the State through video conferencing.

The appellant has filed the instant appeal for quashing the order dated 12.2.2019 passed by learned Special Judge SC/ST Act, Gaya in Alipur P.S. Case no. 72 of 2018 whereby the learned Court was pleased to take cognizance for the offence under sections 341, 323 and 504 of the Indian Penal Code and section 3(1)(r)(s) of the SC & ST (Prevention of Atrocities) Act, 1989.

As per allegation in the FIR, it is stated by the informant that on 16.8.2018 at 10 am, the petitioner abused and assaulted him with a *lathi* as a result of which he sustained injury in his left arm. It is stated that he has a hut near the land of the petitioner.



The petitioner has been asking him to remove the same. On the informant asking for some time, the petitioner was outraged, started to abuse him in the name of his caste and broke his finger.

It is submitted by learned counsel for the appellant that from perusal of the FIR itself it would transpire that the case is one of land dispute. The informant accepts having a hut over the land of the petitioner. It is on the petitioner asking the informant to remove his hut that the instant case has been lodged, falsely implicating the petitioner. It is further submitted that from perusal of the FIR it would transpire that only to make the appearance of the case look serious that in the concluding portion of the FIR, the word caste has been included. However, the allegations levelled therein lack details and do not contain all the ingredients of the offence alleged. It is further submitted that even from materials that have transpired in course of investigation, the occurrence alleged cannot be stated to have taken place in public view and the injury has been found to be simple in nature. Learned counsel for the appellant in support of her contention has relied on the judgment of the Supreme Court in the case Hitesh Verma vs The State of Uttarakhand and another (Criminal Appeal no. 707 of 2020). It is submitted that no prima facie case is made out against the petitioner and hence the order impugned taking cognizance is bad and fit to be set aside.



The appeal is opposed by learned Spl.P.P. for the State. It is submitted that there is no illegality in the order taking cognizance. The only material which has to be looked into by the learned Court taking cognizance is as to whether a prima facie case is made out against the petitioner or not. Reading the contents of the FIR together with the statements of the witnesses recorded under section 161 of the CrPC which have been recorded in paragraph nos. 3, 7, 8, 9, 16, 17, 42, 45 and 46 as also the supervision note contained in paragraph no.30 of the case diary, prima facie case is made out against the appellant and, thus, there is no illegality in the order impugned and the instant appeal be dismissed.

The judgment of the Hon'ble Supreme Court in the case of Hitesh Verma (supra) as relied on behalf of the appellant is of no assistance to the appellant in the facts of the instant case. From the contents of the FIR it would transpire that the informant, who belongs to the Scheduled caste, specifically states that the petitioner abused him in the name of caste. Further in course of investigation the allegations made in the FIR were reiterated by the informant in his further statement. The place of occurrence is described to be a shaded pucca platform ('chabutra') in the vacant land near the cremation ground ('shamshan ghat'). The occurrence which is said to have taken place at 10 am when the informant was



sitting with the covillagers, was witnessed by the public/villagers including Gora Manjhi, Yogendra Manjhi, Manisha Devi, Lal Manjhi, Rameshwar Manjhi, Jhunu Manjhi, Ruby Devi and Sanjay Manjhi whose statements have been recorded in course of investigation. They supported the allegations made in the FIR and stated that the informant was saved at the intervention of the villagers. Thus the occurrence took place in ‘public view’.

Having heard learned counsel for the parties and taking into consideration the submissions made on behalf of the parties, the contents of the prosecution case as contained in the FIR together with the material that has transpired in course of investigation as referred to above, the Court finds that prima facie case is made out against the appellant.

There is no illegality in the order impugned.

The appeal is dismissed.

(Partha Sarthy, J)

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