

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50865 of 2018**

Arising Out of PS. Case No.-163 Year-2013 Thana- SC/ST District- East Champaran

Saheb Dewan through natural guardian Awedin Dewan @ Aawedin Dewan,
S/o Late Md. Jan Devan, resident of Jamunapur Ward No. 10, P.S. Adapur
District- East Champaran.

... .. Petitioner

Versus

1. The State Of Bihar
2. Vimla Devi W/O Yogendra Ram Resident of Village- Jamunbhar, P.S.-
Adapur, District-East Champaran.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Sadanand Paswan, Addl Public Prosecutor

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
CAV JUDGMENT**

Date : 17-11-2022

This application has been filed by Awedin Dewan @ Aawedin Dewan as natural guardian on behalf of petitioner Saheb Dewan, who is aged about 4 years, and he was made accused while he was about 10 months, therefore, this application is for quashing order dated 19.12.2017 passed by learned 1st additional Session Judge, SC/ST(P.O.A.) Act East Champaran, Motihari passed in (SC/ST) P.S. Case No. 163/2013 under which the learned 1st Addl. Session Judge cum Special Judge SC/ST (POA) Act, East Champaren, Motihari has taken cognizance u/s-341,323,504/34,IPC and u/s-03 (i)(v)(x)(xi) SC/ST Act against Saheb Dewan and has issued summon to face trial.



Prosecution case is that on the alleged date and time of the occurrence, while the informant was in her field, all the accused persons abused, assaulted and threatened to kill her.

It is submitted on behalf of the petitioner that at the time of occurrence, this petitioner was aged about 10 months and he was in the lap of his mother. In support of the submission, date of birth certificate has been filed in the case which is contained in annexure 2 which indicates that the date of birth of the petitioner is 1.1.2013, meaning thereby on the alleged date of occurrence, i.e., 15.10.2013, petitioner was only 10 months old. He submits that in terms of section 82 of the IPC, nothing is an offence done by a child upto age of 7 years. He submits that in view of this provision of law, entire accusation even accepted to be true, no offence could have been deemed to have committed by petitioner. He further submits that impugned order of cognizance dated 19.12.2017, passed by learned 1st Additional Sessions Judge, SC/ST Act, Motihari, East Champaran in Motihari (SC/ST) Police Station Case No. 163 of 2013 is contrary to the law and fit to be quashed in respect of petitioner.

Learned counsel for the State opposes the prayer of the petitioner. He submits that the petitioner is named in the



FIR with allegation that he and other accused persons abused, assaulted and threatened the informant when she was in the field. However, he does not dispute the age of the petitioner.

Section 82 of the IPC completely exempts children under 7 years of age from criminal liability in respect of any act done by them. Whatever may be the gravity of the act done by a child under 7 years of age, the child will be absolutely immune from liability. An infant under that age is, by presumption of law doli incapax. The basis of this total exemption is the assumption that a child below that age does not realize and consequently does not intend, the consequences of his act and the necessary culpable state of mind must be deemed to be absent.

Taking into consideration rival submissions of the parties, materials available on record as also the fact that at the time of occurrence, petitioner was only ten months old, this Court is of the opinion that the court below failed to take into consideration provision of section 82 IPC which clearly speaks in its right perspective that nothing is an offence which is done by a child under seven years of age. As such, cognizance order dated 19.12.2017 passed by learned 1st additional Session Judge, SC/ST(P.O.A.) Act East Champaran, Motihari passed in



(SC/ST) P.S. Case No. 163/2013, is hereby quashed with respect
to the petitioner.

This quashing petition is allowed in the aforesaid
terms.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	10.11.2022
Uploading Date	17.11.2022
Transmission Date	17.11.2022

