

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRA 141 of 2018

CHAPA ORAON
VS.
JAYEETA MUKHERJEE & ANR.

For the Appellant : Mr. Ayan Bhattacharyya, Adv.,
Mr. Sharequl Haque, Adv.

For the Opposite Parties : Mr. Madhusudan Sur, Id. A.P.P.,
Mr. Manoranjan Mahata, Adv.

Hearing concluded on : 23rd September, 2022

Judgement on : 27th September, 2022

Siddhartha Roy Chowdhury, J:-

1. The appellant Chapa Oraon by filing this petition under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 calls in question the legality of the order passed by the learned Additional Sessions Judge, 1st Court cum Special Judge under SC and ST Act Barasat North 24 Parganas in connection with Special Case No. 11/2017 arising out of Bidhannagar South Police Station Case No. 109/2016 dated July 09, 2016 registered under Section 506 of the Indian Penal Code 1860 and Section 3(s) and 3 (r)

of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Briefly stated, Chapa Oraon filed a petition of complaint before the learned Chief Judicial Magistrate, North 24 Parganas under Sections 420/406/506 of the Indian Penal Code and Section 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which was forwarded to the concerned police station under Section 156(3) of the Code of Criminal Procedure and Bidhannagar South Police Station Case No. 109/2016 was registered on 09.7.2016. Police took up investigation which culminated into submission of charge sheet against Smt. Jayeeta Mukherjee. On 09.11.2017 police submitted charge sheet no. 176/2017 dated 04.11.2017 against Smt. Jayeeta Mukherjee before the learned Additional Chief Judicial Magistrate, Bidhannagar. The same was transmitted to the Court of learned Additional Sessions Judge having jurisdiction warrant of arrest was issued by the learned Special Court against the accused person on 14.12.2017. Smt. Jayeeta Mukherjee, surrendered to the jurisdiction of learned Special Court and prayed for bail.
3. Having heard the submissions of the learned Public Prosecutor-in-charge and learned counsel for the accused petitioner, learned Additional Sessions Judge, 1st Court-cum-Special Judge under SC and ST Act, Barasat North 24 Parganas was pleased to enlarge the accused on bail of Rs.2,000/-.
4. Mr. Bhattacharyya, learned counsel appearing on behalf of the appellant drawing my attention to Sub-section 3 of Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,

1989 submits that the de facto complainant has a statutory right to represent before the Court with accurate and timely notice of any Court proceeding including proceeding for bail and the Special Public Prosecutor or the State Government shall have to inform the victim about the proceeding under this Act. While the prayer for bail was filed before the Court, the victim was not served with any notice resulting into infraction and / or violation of the statutory right of the victim.

5. To buttress his argument Mr. Bhattacharyya places his reliance upon judgement of Hon'ble Supreme Court reported in ***AIR 2021 SC page 5610***. In the aforesaid case also for non compliance of Sub-section 3 of Section 15A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 the Hon'ble Supreme Court was pleased to cancel the bail order.
6. Learned counsel appearing on behalf of the State candidly admits the infraction caused in course of hearing of the bail application.
7. None is appearing on behalf of the opposite party no. 1 despite notice.
8. It is trite law to say that when statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. In other words the procedure should be followed as it flows from the statutory provision. Here in this case in a routine manner learned Special Court considered the bail application without taking into consideration the mandate of the statute as laid down under Section 15A (3) of the Special Act. No notice was admittedly served upon the victim as it appears from the impugned order itself.

9. Under such circumstances, I am inclined to cancel the bail order passed by the learned Special Court on December 14, 2017. However, the accused Smt. Jayeeta Mukherjee since had no role to play in the entire episode, she should not be made to suffer for the lapses on the part of the Court – *actus curiae neminem gravabit*. Smt. Jayeeta Mukherjee cannot be taken into custody under any circumstances as an aftermath of the cancellation of the bail order.
10. I am inclined to send back the case record to the learned Special Court with a direction to re-hear the bail application after serving notice upon the de facto complainant / victim and upon the accused / petitioner and dispose of the bail application in accordance with law.
11. Thus the appeal is disposed of along with applications if any, however, without cost.
12. Let a copy of the judgement be sent down to the learned Court below for information and necessary action.
13. Parties shall act on basis of the server copy of the judgement downloaded from the official website of this Court.
14. Urgent Photostat certified copy if applied for, be supplied to the parties, upon completion of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)