

Item No.13
Ct.No.2
dc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 140 of 2022

Sri Sharwan Mishra & Ors.
versus
The State of West Bengal & Anr.

In Re: An Application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973.

Dr. Navin Barik,
Mr. Sayan De,
Ms. Esha Acharya,
Mr. Kaustov Shome ... For the Petitioners.

Mr. Aditi Shankar Chakraborty,
Mr. Ujjwal Luksom ... For the State.

Supplementary affidavit filed by the petitioners reflects that the learned Special Court was pleased to frame charges under Sections 3(1)(f)(b)(r)(s) of the SC & ST (POA) Act and under Section 323 of the Indian Penal Code. The said order also reflects that the charge was framed on 20.05.2022.

Learned advocate appearing for the petitioners has emphasized regarding the civil suit pending between the earlier owner and the present petitioners for more than 10 years. It has been submitted that the present complainant all on a sudden in the year 2016 purchased a property and has malafidely invoked the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 for settling her scores.

Mr. Luksom, learned advocate appearing for the State has produced the case diary and drawn the attention of the Court to the statement of different witnesses. Learned

advocate for the State has also failed to explain to the Court regarding the proper Sections which are to be applied for the purposes of charges under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In view of the contentions of the learned advocate for the petitioners that the civil suit was pending, I am of the opinion that there are no documents available before this Court to reflect that whole of the papers/documents relied upon by the petitioners were brought to the notice of the investigating agency at the stage of the investigation of the case.

The statement of the witnesses, *prima facie*, supports the contention or the applicability relating to the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. However, all the provisions under Sections 3(1)(f)(b)(r)(s) of the SC & ST (POA) Act are not applicable in the circumstances of the case, particularly the statement recorded under Section 161 of the Code of Criminal Procedure relied upon by the prosecution.

The dispute definitely relates to enjoyment of the property or interest in the property owned by the complainant who claims to be a member of the SC and ST community. As such, the relevant provisions are to be invoked within the campus of the abuses and the property complained of. Without specifying the Sections relating to the applicability of particular sub-Section or sub-Clause of Section 3 of the

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, I direct the learned Magistrate to reconsider the charge restricted to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 so that the petitioners are able to know the charges which they are required to answer in course of the trial. Accordingly, the part of the charges relating to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby set aside.

The learned Magistrate will freshly frame the charges under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and thereafter proceed with the trial of the case.

With the aforesaid directions, the revisional application being CRR 140 of 2022 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)