

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.129 of 2020

Arising Out of PS. Case No.-668 Year-2019 Thana- GARKHA District- Saran

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1. USHA DEVI Wife of Ratnesh Kumar Singh Resident of Village-Vishwambharpur, P.O-Kudarbhadha, Bishambharpur Basant, P.S.-Garkha, District-Saran at Chapra, presently Mukhiya of Gram Panchayat Raj, Kudarbhadha, Block-Garkha, District-Saran at Chapra.
 2. Ratnesh Kumar Singh Son of Dhruv Narayan Singh Resident of Village-Vishwambharpur, P.O-Kudarbhadha, Bishambharpur Basant, P.S.-Garkha, District-Saran at Chapra. ... Petitioners

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF POLICE, BIHAR, PATNA
2. The District Magistrate, Saran at Chapra, District-Saran at Chapra
3. The District Panchayat Raj Officer, Saran at Chapra, District-Saran at Chapra
4. The Superintendent of Police, Saran at Chapra, District-Saran at Chapra
5. The Deputy Superintendent of Police, Chapra, District-Saran at Chapra
6. The Station Head Officer, Garkha Police Station, District-Saran at Chapra
7. Senior Deputy Collector (Probation)-cum-Block Development Officer, Garkha, District-Saran at Chapra ... Respondents

Appearance :

For the Petitioners : M/s S.B.K. Mangalam, Adv.

For the Respondents : Mr. Md. Nasrul Hoda Khan, SC I

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 25-04-2023

Heard counsel for the petitioners and the State.

2. Pleading has already been completed from both the parties.

3. Counsel for the petitioners submits that the present application has been filed for quashing of Garkha P.S. Case No. 668 of 2019, dated 30.10.2019, lodged under Sections 385/34 of the Indian Penal Code and 3(2)V(a) of the Scheduled Castes and



Scheduled Tribes (Prevention of Atrocities) Act, pending in the Court of the learned Special Judge SC/ST, Saran at Chapra.

4. Counsel submits that from the plain reading of the first information report, it transpires that it has been alleged that Mukhiya, Usha Devi, and her husband were creating hurdle in implementation of *Sat Nishchay Yojna* relating to Gram Panchayat Raj, under Kudarbadha, block Garkha, Saran district, in the State of Bihar. He submits that in the first information report allegation against the Mukhiya is that she has not transferred the money even after the instructions of the officials. According to the petitioners it may amounts to dereliction in duty and can not be an offence under Section of the Indian Penal Code and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

5. Counsel further submits that allegation against her husband is that he has threatened to the Ward Members. Counsel submits that under Section 18(5) of the Bihar Panchayat Raj Act, 2006, especially empowers that in case a Mukhiya or Upmukhiya willfully omits or refuses to perform his duties and functions under this Act, or abuses the power vested in him or is found to be guilty of misconduct in the discharge of his duties, disobedience of order of an authority established by law etc., then, order for removal of such Mukhiya may be made providing a reasonable opportunity for



explanation. Counsel submits that when such act of Mukhiya is already covered under the Bihar Panchayat Raj Act, 2006, then first information report may not be filed and if filed it is subject to quash.

6. Counsel for the petitioners raised another point by virtue of an order passed by this Court in C.W.J.C. No. 10665 of 2017 (Abhishek Ranjan Vrs. Union of India & Ors.) by which coordinate Bench this Court has ordered vide order, dated 03.11.2017 that “Having considered the issue, the Court deems it appropriate to direct that until further orders, the Gram Panchayats shall not be forced and no coercive action shall be taken against them for transferring the funds of the Gram Panchayat to the account of the Ward Committees under the *Sat Nishchay Yojna*”.

7. Counsel submits that the said order is basically order in rem and, therefore, shall apply uniformly for all similarly situated matters. Counsel further submits that by making plain reading, it transpires that cognizable offence is not made out and, therefore, lodging of first information report and continuation of the investigation is bad in law. Counsel submits that addition of Section 3(2)V(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not applicable at all in this case as no offence was specified in the first information report and due to



this reason the said Section of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not applicable at all.

8. Counsel for the State submits that counter affidavit has already been filed and in the counter affidavit it has come that prior to filing of the charge sheet investigation has been completed and charge sheet has been filed against the petitioners vide Charge Sheet No. 26 of 2020, dated 30.01.2020, for offences under Sections 385/34 of the Indian Penal Code and 3(2)V(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It has also been mentioned by the State in its pleading that benefit of Section 41(1) of the Criminal Procedure Code, 1973, was also given to the present petitioners, but, they have not opted for the same.

9. Upon going through the materials and records as well as the documents and bare reading of the first information report, it transpires to this Court that there are two accused in this case, one is the petitioner no. 1, who is the people's representative and holding the post of Mukhiya and the second is her husband. Whatever the argument made by the counsel for the petitioners, this Court is convinced that exemption should be given under Section 18(5) of the Bihar Panchayat Raj Act, 2006, to the petitioner no. 1 only. So far as the role of petitioner no. 2 is concerned, he can not



be exempted under the provisions of law and the points raised by the counsel for the petitioners. He can neither be covered by virtue of the order of Hon’ble Single Bench nor he be granted any protection under Section 18(5) of the Bihar Panchayat Raj Act, 2006, since in the entire episode of the Bihar Panchayat Raj Act, 2006, the said petitioner no. 2 is stranger and any role of petitioner no. 2 under the Bihar Panchayat Raj Act, 2006, can not be tolerated by any one and, therefore, this Court is of the firm view that offence is made out against petitioner no. 2 only and not against petitioner no. 1. Therefore, Garkha P.S. Case No. 668 of 2019, dated 30.10.2019, lodged under Sections 385/34 of the Indian Penal Code and 3(2)V(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is quashed so far petitioner no. 1 is concerned and case shall continue against petitioner no. 2.

10. With this directions, this writ petition is **allowed in part.**

(Dr. Anshuman, J)

Shamshad/-

AFR/NAFR	AFR
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