

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39496 of 2015

Arising Out of PS. Case No.-105 Year-2011 Thana- MADHEPUR District- Madhubani

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1. Fuleshwar Thakur and Anr Son of Ramphal Thakur
 2. Arjun Prasad Thakur Son of Rampahl Thakur Both are residents of Village Jatua P.S. Madhepur, District Madhubani.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Ranju Devi wife of Ram Kumar Paswan Resident of Village Jatua P.S. Madhepur, District Madhubani.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Jha, Advocate
For the Opposite Party/s : Mr.Bharat Bhushan, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 25-02-2023 Heard learned counsel for the parties.

The present petition has been preferred for quashing of the impugned order dated 12.03.2015 in G.R. No. 791 of 2011 (T.R. No. 365 of 2015) arising out of Madhepur P.S. Case No. 105 of 2011 passed by Ist Additional Session Judge cum Special Judge, Madhubani by which petition filed by petitioner for discharge under Section 3 (X) of S.C. & S.T. (Prevention of Atrocities) Act has been rejected.

As per the prosecution story, the informant alleged that while she was returning after attending the nature's call, she saw the petitioners damaging the hand of Dr. B.R. Ambedkar's statue as also demolishing her house.



Further allegation is that when she protested, the accused petitioners Fuleshwar Thakur and Arjun Thakur assaulted her by 'lathi' on her hand and by fist and slap. He further took her caste name 'dusadhin' and as she wanted to escape, allegation is that Arjun Thakur snatched her chain worth Rs. 1500/-. Later, she was taken to the Jhanjharpur Hospital for treatment. Accordingly, the FIR was lodged.

The police investigated the matter and after completion of investigation, submitted charge sheet under Sections 341, 323, 427, 504 and 34 of the Indian Penal Code as also Section 3(X) of S.C. & S.T. Act.

Thereafter, the learned A.C.J.M, Jhanjharpur having gone through the materials on record and having prima facie satisfied, vide an order dated 12.06.2013 took cognizance under Sections 341, 323, 307, 427, 504 and 34 of the Indian Penal Code and Section 3 (S) of the S.C. & S.T. Act.

Thereafter, on 19.02.2014, petition under Section 227 and 228 of the Cr.P.C. was filed before the learned Special Judge, Madhubani for their discharge under Section 3(X) of S.C. & S.T. Act praying that no case is made out under aforesaid sections.

The matter was taken up on 12.03.2015 and vide a



reasoned order, the same was rejected.

The learned Special Judge, Madhubani detailed out the entire facts to reject the petition and for brevity, the same is incorporated:-

“After perusal of heading of the petition it is not clear whether the applicant has filed the petition under Section 227 or 228 Cr.P.C. but after perusal of prayer portion of the petition, it appears that petitioner has filed a instant petition under Section 228 of the Cr.P.C. It also appears from the paras 1, 5, 6, 7, 8, 16, 17 and 28 of the case diary and supervision note of Dy. S.P. and S.P. Madhubani that there is sufficient ground for presuming that the accused persons have committed on offence under Sections 323, 341, 427, 504 and 34 of the Indian Penal Code and under Section 3(i)(X) of the S.C. & S.T. Act. Offence under Section 3(I) (X) of the S.C. & S.T. Act is exclusively triable by special Sessions Judge. It is well settled principle of law, that there is grave suspicion the charge should be framed.

This being the position, with the above observation, petition of petitioner is not tenable and same is hereby rejected. Petitioner is directed to physically present on the date fixed for framing charge. If the petitioner is aggrieved by this order and they wants to challenge the same to the superior Court then they have filed an application



supported by an affidavit within 15 days of this order.

Put up on 15.04.2015 for framing charge.”

Learned counsel for the petitioner submits that actually the plot in question for which the informant claims that her hut was situated which was demolished and the hand of the statue of Dr. B.R. Ambedkar present there was also broken has been settled in favour of petitioner no. 1 from Zila Parishad, Madhubani for Rs. 3,000/- which was encroached by the prosecution party and direction was given by the Deputy Development Commissioner to remove the said encroachment but the same was not done.

The further submission is that Fuleshwar Thakur (petitioner no. 1) has also filed Criminal Case No. 107 of 2011 against the informant's side in which cognizance has been taken on 18.09.2013. He further submits that anything which has not been done in a public view, the different Sections of S.C. & S.T. Act cannot be attracted. He further cites an order of the Bench of this Court in **Anirudh Rai Vs. State of Bihar and Anr. reported in 2007 (3) PLJR 267** with reference to paragraph 5 and 6 which read as follows:-

“5. From the perusal of the entire order-sheets of the encroachment case, it transpires that



the complainant was not a settler of the land, He had encroached upon a public land and a proceeding was initiated and finally the encroachment was removed, maliciously a complaint case was instituted. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was enacted by the legislature to protect the interest of Scheduled Castes and Scheduled Tribes, but when it is being used to implicate any one for personal gain, this proceeding should never continue. A judicial process should not be continue. A judicial process should not be instrumental operation for harassment through the complaint petition.

6. Considering the fact that allegation made in the complaint petition do not make out an offence but the material show that the same is for malicious reason, the order, taking cognizance, as well as entire criminal proceeding of Complaint Case No. 1000C of 2001 is quashed”

He as such submits that learned Special Judge, Madhubani erred in rejecting the petition put forward by the petitioners as such interference is required.

Per contra, Mr. Bharat Bhushan, learned APP submits that a bare perusal of the FIR would show that the lady was returning after attending the nature's call when she saw the petitioners have broken the hand of Dr. B.R. Ambedkar's statue



and further demolishing her hut, the same was objected whereafter allegation of assault and abused by caste name have been made. He as such, submits that it clearly shows that the said assault/abuse was made in public place and not inside her hut.

Having gone through the rival submissions as also the facts of the case clearly the abuse that has been alleged by the lady was in a public place. The lady herself has narrated that she was returning after attending the nature's call, when she saw the hand of the Dr. B.R. Ambedkar's were broken as also her hut and upon objection, she was abused by caste name and also allegation of assault are there.

Thus, this Court finds force in the submission put forward by the learned APP that the abuse was certainly in public place.

So far as the case **Anirudh Rai Vs. The State of Bihar** (*supra*) cited by the petitioners are concerned, in that case a public land was encroached and the Circle Officer, Bettiah following the process of the law had taken steps for its removal which cannot be equated in the present case as this was not an encroachment rather the lady was having a hut in the said place as also a statue was present there. The petitioner only on the



basis of the claim that subsequently the land settled in his favour was trying to remove the lady as also her hut and Dr. B.R. Ambedkar's statue was damaged in the process and as such the said case cannot come to his rescue.

As the lady was abused in public view and caste name taken, this Court does not find any error in the order dated 12.03.2015 passed by the learned Additional Session Judge cum Special Judge, Ist Madhubani by which the petition preferred for omission of case under Section 3 (X) of S.C. & S.T. (Prevention of Atrocities) Act was rejected.

This Court does not found any merit in the case, which is accordingly rejected.

(Rajiv Roy, J)

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