

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7746 of 2022

Arising Out of PS. Case No.-32 Year-2021 Thana- SC/ST District- Gopalganj

Sri Kamla Kant Prasad @ Kamla Kant Prasad Son of Vishwanath Prasad the then S.D.P.O., Head Quarter-3 at present S.D.P.O. Constable Sub Selection Board (A) Block 6th Floor, Sardar patel Bhawan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Surendra Gaur S/O Late Khublal Gaur R/O Village- Semra, P.S.- Bhorai, Distt.- Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Advocate Mr. Santosh Kumar Pandey, Advocate
For the Opposite Party/s	:	Mr. Satyendra Narayan Singh, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 06-09-2024

Heard Mr. Rajesh Kumar, learned Advocate for the petitioner and the learned Additional Public Prosecutor for the State.

2. The petitioner by filing the present application under Section 482 of the Cr.P.C., seeking quashing of the FIR vide Gopalganj SC/ST P.S. Case No. 32 of 2021, registered for the offences punishable under Sections 341, 323 and 166 of the Indian Penal Code and under Sections 3(i)(r), 3(2)(vii) of the SC/ST (Prevention of Atrocities) Act.

3. The short facts which led to the filing of the present application starts from the very institution of the FIR on



30.06.2021, wherein it is alleged that on 01.07.2015, the petitioner, who was earlier holding the post of SDPO, Hathwa has taken the informant to his office and harassed publicly and humiliated. By showing the fear of false implication in Arms Act, he was also forced to sign one application for instituting a case against one Ashutosh Diwedi. Due to the aforesaid incidence, the informant has suffered mental agony and loss of reputation.

4. Learned Advocate for the petitioner while assailing the very institution of the FIR firstly contended that with regard to an occurrence, which took place on 01.07.2015, the present FIR has instituted in the year 2021 and to be more specific on 30.06.2021. The offence as alleged in the FIR, is punishable under Section 341 of the Indian Penal Code, wherein the maximum punishment is one month with fine, whereas, under Section 323 IPC, the punishment is of one year with fine. Similarly, under Section 166 of the Indian Penal Code, the punishment is provided for two years with fine. Thus, very institution of the FIR after lapse of six years, is hit by Section 468 of the Cr.P.C., where cognizance is a bar for an offence after expiry of the period of limitation.

5. Learned Advocate for the petitioner further urged



that even if the allegation levelled in the FIR taken to be true, no offence much less under Section 3(i)(r), 3(2)(vii) of the SC/ST (Prevention of Atrocities) Act is made out.

6. The narratives made in the FIR does not reveal that the informant was in any manner humiliated and harassed on account of he being a member of SC/ST community. It is also contended that subsequently, the statement of the informant/O.P. No. 2 was recorded under Section 164 of the Cr.P.C., the copy of which is marked as Annexure-3 to the supplementary affidavit, wherein, he categorically denied that he has ever been instituted such FIR, rather he deposed before the learned Magistrate that his signature has been obtained on a blank paper, which has been used by some unscrupulous person for the purpose of lodging of the FIR on account of some oblique reason. He failed to recognize even the petitioner and denied the factum of institution of the FIR.

7. Adverting to the aforesaid facts, learned Advocate thus submitted where a criminal proceeding is manifestly attended with the *mala fide* and/or instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the proceeding must be quashed. Reliance has also been placed on a decision



rendered by the Hon'ble Apex Court in the case of ***State of Haryana Vs. Bhajanlal & Ors., 1992 SCC (Supp. 1) 335***. It is lastly contended that the very continuation of the FIR is also bad in law that till date, the investigation has not been completed nor any charge-sheet has been filed and the matter has been kept pending for investigation.

8. Learned Advocate for the State, on the other hand, submits that since the matter is pending for investigation, let the investigation be completed.

9. Considering the submissions advanced on behalf of the learned Advocate for the respective parties and taking note of the fact that the allegation levelled in the FIR clearly demonstrate that no case much less under Section 3(i)(r), 3(2) (vii) of the SC/ST (Prevention of Atrocities) Act, 1989 is made out for the simple reason, as it has not been alleged that he was publicly tortured and harassed on account of he being member of the SC/ST community. An offence under the 1989 Act would be made out when a member of vulnerable section of the society is subjected to indignities, humiliation and harassment. The Hon'ble Supreme Court in the case of ***Hitesh Verma Vs. State of Uttarakhand & Anr., 2020 (4) PLJR (SC) 345*** has ruled that offence under the Act, 1989 is not established merely on the fact



that the informant is member of the Scheduled Caste unless there is intention to humiliate a member of Scheduled Caste or Scheduled Tribe for the reason that the victim belongs to such caste. It would be worthy to reproduced paragraph 12 and 13 of the afore-noted decision.

“12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as “(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view”.

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that



Respondent 2 is a member of Scheduled Caste.”

10. So far the allegations with regard to the offences allegedly falling under the penal provisions of the Indian Penal Code are concerned, this Court finds substance in the submission of the learned Advocate for the petitioner that in all the offences, the maximum punishment for an offence is up to two years and in the case in hand, with regard to an occurrence which took place on 01.07.2015, the present FIR has instituted on 30.06.2021, without there being any explanation for delay and, as such, certainly hit by Section 468 of the Cr.P.C, bar to take cognizance after lapse of the period of limitation. Further Section 469 of the Cr.P.C. provides commencement of the period of limitation which starts on the date of the offence and/or if the commission of the offence is not known to the person aggrieved, the first day on which such offence come to the knowledge of such person. In both the count, the cognizance of the offence is hit by Section 468 Cr.P.C; all the more in view the statement of the informant/O.P. No. 2 as recorded under Section 164 Cr.P.C.

11. In view of the aforesaid facts and the settled proposition of law, this Court finds merit in the quashing application and accordingly, the continuation of the proceeding,



arising out of Gopalganj SC/ST P.S. Case No. 32 of 2021 is an abuse of the process of law and, as such, the aforementioned FIR, in question, stands quashed.

12. The quashing application is hereby allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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