

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.751 of 2020

Arising Out of PS. Case No.-24 Year-2017 Thana- ASHOK PAPER MILL District-
Darbhanga

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1. Abdul Hannan @ Hannan, Son of Late Md. Israil, Resident of Village- Chandanpatti, P.S.- Ashok Paper Mill (Pator O.P.), District- Darbhanga.
 2. Salman Ahmad @ Salman, Son of Late Md. Israil, Resident of Village- Chandanpatti, P.S.- Ashok Paper Mill (Pator O.P.), District- Darbhanga.
 3. Md. Shamsuddin @ Samruddin, Son of Md. Farooque, Resident of Village- Chandanpatti, P.S.- Ashok Paper Mill (Pator O.P.), District- Darbhanga.
 4. Md. Jamil Akhtar, Son of Md. Idrish, Resident of Village- Chandanpatti, P.S.- Ashok Paper Mill (Pator O.P.), District- Darbhanga.
 5. Syed. Manzar Ali @ Md. Manzar Ali @ Md. Manzar, Son of Late Sabir Hussain, Resident of Village- Chandanpatti, P.S.- Ashok Paper Mill (Pator O.P.), District- Darbhanga.

... .. Appellant/s

Versus

1. The State of Bihar
2. Chaitu Paswan, Son of Late Chulai Paswan, Resident of Village- Ashok Paper Mill (Pator O.P.), District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Iqbal Asif Niazi, Adv.
For the State	:	Mr. Sadanand Paswan, SPP
For the Informant	:	None.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

8 06-02-2024 1. Heard learned counsel for the appellants and learned APP for the State.

2. Nobody appears on behalf of respondent no. 2.

3. The instant appeal has been filed under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short SC/ST Act) against the order dated 28.11.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge, Darbhanga in connection with SC/ST G.R. No. 46 of 2017, arising out of A.P.M. P.S. Case No. 24 of



2017 registered for the offences punishable under sections 435 and 504 of the Indian Penal Code and section 3(2)(iii) of the SC/ST Act, whereby a petition dated 04.06.2018 filed by the appellants with a prayer to discharge them under Section 227 of Code of Criminal Procedure (in Short Cr.P.C.) has been rejected.

3. Mr. Iqbal Asif Niazi, learned counsel for the appellants, submits that the respondent no. 2, Chaitu Paswan lodged A.P.M. P.S. Case No. 24/2017 with this allegation that on the alleged night of occurrence, he was asleep in his straw hut (animal shelter) situated in the eastern side of his residential house then, all of sudden, he felt some heat owing to which he woke up and found that fire had caught to the roof of his hut and thereafter, he rushed out and saw the appellants and one other accused in fleeing position and at that time, the appellants were saying that the respondent no. 2 would die by sustaining burn injury and also called him by using caste based abusing words and thereafter, on hearing his cry, neighbouring people gathered there who extinguished the fire and a she-goat that was inside the hut was also saved and no harm was caused to anything except burning of some clothes in the said incident of fire. The police thoroughly investigated the said allegation but did not find any substance and thereafter, submitted the final form showing the respondent's case as a false case. It is further



submitted that admittedly, the alleged occurrence did not occur in full public view, so the alleged offence of SC/ST Act does not attract in this matter and furthermore, it is unbelievable that the respondent no. 2 was able to identify the appellants as being present near the place of occurrence as, admittedly, the alleged occurrence took place in the dark night and on this aspect, the allegation levelled by the respondent no. 2 is completely false. It is further submitted that in fact, there was some dispute in between two muslim communities belonging to Shia and Sunni sect on account of the boundary wall of a graveyard wherein the respondent no. 2 played an instrumental role in support of Shia community group that adversely affected the social harmony and on 11.02.2017, when local people started erecting boundary wall around the graveyard by using bamboo stick then the prosecution party came and stopped their work and committed *mar-pit* with them by means of lathi, danda, and bricks leading to injuries to several persons and thereafter, A.P.M. P.S. Case No. 18/2017 was lodged by the police and on the same day, apart from the said police case, another case and counter-case bearing A.P.M. P.S. Case Nos. 19/2017 and 20/2017 were also lodged by both the parties of said graveyard dispute. It is further submitted that the prosecution party of A.P.M. P.S. Case No. 19/2017 conspired with respondent no. 2 and cooked up a false



story of fire to the hut of respondent no. 2 and succeeded in lodging the A.P.M. P.S. Case No. 24/2017 for the offence of SC/ST Act and other offences of IPC so in the background of the said graveyard dispute and cases lodged by both the sides, the allegations levelled by respondent no. 2 in the FIR of A.P.M. P.S. Case No. 24/2017 can be deemed to be completely false and having been made with malice intention. However, in the present matter, a good relation has established in between both the communities as well as with the respondent no. 2, who has not appeared before this Court despite having received the notice.

4. In support of the above submissions, learned counsel for the appellants has placed reliance upon a judgment of the Hon'ble Apex Court passed in the case of Hitesh Verma vs. State of Uttarakhand & Anr. reported in (2020) 10 SCC 710 and he has referred the paragraphs no. 12, 13 and 14 of the said judgment which are being reproduced **as under** :-

“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.

14. Another key ingredient of the provision is insult or intimidation in “any place within public view”. What is to be regarded as “place in public view” had come up for consideration before this Court in the judgment reported as Swaran Singh v. State [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] . The Court had drawn distinction between the expression “public place” and “in any place within public view”. It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic).

5. Heard learned counsel for the appellants and perused the order impugned and other relevant materials available before this Court.



6. In view of above submissions, there are some admitted circumstances, firstly, the incident of fire to straw hut of respondent no. 2 took place in the alleged night, secondly, there was no good relation between the appellants and respondent no. 2 at the time when the alleged occurrence of fire took place and the informant (respondent no. 2) claimed to have seen the appellants in fleeing position near his straw hut at the relevant time of commission of the alleged occurrence and during investigation, the respondent no. 2 remained firm to his stand while recording his statement before the police and one another witness, namely, Dular chand Paswan, whose hut is situated near the hut of the respondent no. 2, supported the allegations of respondent no. 2, though other witnesses did not claim to have seen the appellants being present at or fleeing from the place of occurrence but accepted the incident of fire having taken place to the straw hut of respondent no. 2 and considering all these relevant materials, learned trial court has found prima facie material to attract the alleged offences of IPC and SC/ST Act and accordingly, has taken cognizance of the said offences.

7. It is settled principle of law that for allowing a prayer made under Section 227 of Cr.P.C., the trial court has to come to the conclusion that there is no legal and acceptable



evidence or that the allegation does not make out any offence at all and the accused cannot be convicted even when the entire case of the prosecution is accepted as correct. Such situation is not available in the present matter as some important circumstances discussed above attracting the main ingredients of the alleged offences are available against the appellants and moreover, a slight suspicion in respect of the involvement of one in the alleged crime is sufficient to put him under trial. So far as the principles laid down by the Hon'ble Apex Court in the Case of Hitesh Verma (supra) is concerned, the facts and circumstances of the present matter are completely different from the said cited case as the instant matter not only relates to the offence punishable under Section 3(1)(r) of SC/ST Act but also relates to the offence punishable under Section 3(2)(iii) of SC/ST Act. When the offence of mischief to a building or a property belonging to a person of SC/ST is committed in the night then to attract the offence punishable under Section 3(2)(iii), it is not necessary to show that such offence of mischief has been committed in full public view as such type of offence is not committed in public view, particularly in the night. Though, in the light of the principle laid down by the Hon'ble Apex Court in the above referred case, for attracting an offence punishable under Section 3(1)(r) of SC/ST Act, it must be



shown that such offence has been committed within public view but the instant matter also relates to the offence punishable under Section 3(2)(iii) of SC/ST Act as well as offences of IPC and to attract these offences, there are sufficient prima facie materials, hence the principle laid down by the Hon'ble Apex Court in the above referred case does not help the appellants.

8. It is well settled principle of law that the primary consideration at the stage of framing of charge is the test of existence of prima facie case and at this stage, the probative value of materials on record need not be gone into and while framing of charge, the court has to form presumptive opinion to the existence of factual ingredients constituting the offence alleged.

9. For the aforesaid reasons, this court does not find any illegality and impropriety in the order impugned hence there is no merit in the instant appeal, so it stands dismissed.

(Shailendra Singh, J)

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