

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33045 of 2021

Arising Out of PS. Case No.-176 Year-2019 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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1. Surendra Narayan Mishra @ Suresh Mishra, S/o Late Mahendra Narain Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 2. Parmanand Mishra, Son of Late Nawablal Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 3. Pramod Mishra, S/o Late Nawablal Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 4. Durga Nand Mishra, S/o Late Nawablal Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 5. Harikant Mishra @ Hari Mishra, S/o Late Rameshwar Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 6. Ashwani Kumar Mishra @ Rinku Mishra, S/o Satya Narayan Mishra @ Sahdeo Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 7. Amresh Kumar @ Guddu Kumar Mishra @ Guddu Mishra, S/o Satya Narayan Mishra @ Sahdeo Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 8. Deepak Mishra, S/o Satya Narayan Mishra @ Sahdeo Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 9. Bijay Kumar Mishra @ Bijay Mishra, S/o Surendra Narain Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.
 10. Sanjay Kumar Mishra @ Sanjay Mishra, S/o Ram Swarth Mishra, Resident of Village- Salempur,P.S.- Ujiarpur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Asha Devi, Wife of Sukun Sada, Resident of Village- Salempur, P.S.- Ujiarpur, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amarendra Narayan, Advocate
For the Opposite Party/s : Mr. Sadanand Paswan, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT

Date : 05-07-2024

1. Heard learned counsel for the petitioners and



learned A.P.P. for the State.

2. The petitioners have filed the instant application praying for quashing the order dated 17.8.2019 passed in C.R. no.176 of 2019 whereby the learned Special Judge, SC/ST Act, Samastipur was pleased to take cognizance against the petitioners under sections 147, 149, 341, 323 and 427 of the Indian Penal Code and sections 3(1)(r), (s) and (w) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ('SC and ST Act' in short).

3. The prosecution case as per the complaint filed by the opposite party no.2 on 12.6.2019 in Court of the learned Special Judge-cum-Additional District and Sessions Judge Ist, Samastipur alleges *inter alia* that on 19.5.2019 at about 5 p.m. while the opposite party no.2 was in her *kirana* shop, the accused persons who are the petitioners herein along with twenty unknown accused persons came variously armed with *lathi*, *danda*, pistol etc. They abused the opposite party no.2 in filthy language and on her protesting, they carried out loot and destruction of the various articles kept in her shop and took away Rs.60,000/- in cash. Thereafter, the opposite party no.2 states that the accused persons entered her hut and also caused destruction there and looted clothes worth Rs.5,000/- and



ornaments worth Rs. 1 lakh. The opposite party no.2 along with the other members of her family including her daughter-in-law etc were assaulted and abused in the name of their caste. As the local police station did not register the case nor was the case registered inspite of the opposite party no.2 having addressed a complaint to the Superintendent of Police, Samastipur, thus the instant complaint.

4. On the complaint being filed by the opposite party no.2, Complaint Case no.176 of 2019 was registered. In course of inquiry the statement of the complainant as also the witnesses namely Sudamiya Devi, Budhni Devi and Bhatu Sada were recorded.

5. By order dated 17.8.2019, the learned Special Judge, SC/ST Act, Samastipur was pleased to take cognizance in the case. It is against this order that the instant application has been preferred.

6. Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the case. No such occurrence as alleged has taken place. Even from the contents of the statement of the witnesses examined in support of the complainant it would transpire that they are not eye witness to the occurrence. The false implication of the petitioners is due to



land dispute between the parties with respect to a piece of land measuring an area of 10 *kathas* 10 *dhurs*, full description of which has been given in paragraph no.10 of the petition. The implication of the petitioners under the SC and ST Act as also the Indian Penal Code is malafide and malicious and an abuse of the process of the Court. It is thus prayed that the order taking cognizance be quashed and the instant application be allowed.

7. The application is opposed by learned A.P.P. appearing for the State.

8. Having heard learned counsel for the parties and having perused the material on record, it transpires that not only the petitioners are named in the complaint petition but there is direct allegation against them of having assaulted the opposite party no.2 and the members of her family and causing destruction to her property at her shop as also her hut. There is further allegation that the complainant and others were abused in the name of their caste. On further perusal of the statement of the witnesses whose statements have been recorded in course of inquiry, it transpires that besides the complainant, the witnesses are also eye witness to the occurrence and in categorical terms they have supported the allegations levelled in the complaint against the petitioners.



9. Thus in the facts and circumstances of the case, in the opinion of the Court, *prima facie* case is made out against the petitioners and the learned trial Court rightly took cognizance in the case by the order impugned dated 17.8.2019. Learned counsel for the petitioners has not been able to point out any illegality in the order taking cognizance.

10. In view of the facts and circumstances of the case, the Court finds no merit in the instant application and the same is dismissed.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	07.05.2024
Uploading Date	08.07.2024
Transmission Date	

