

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2559 of 2022**

Arising Out of PS. Case No.-64 Year-2019 Thana- MADHUBANI TOWN District-
Madhubani

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1. Indra Kant Jha Son Of Late Fudi Jha Resident Of Village - Sahpur Dahiwat Madhopur, Ward No.10, Sahpur, Belahi, P.S.- Pandaul, Distt.- Madhubani 847231
 2. Indra Sekhar Jha Son Of Late Tej Narayan Jha Resident Of Village - Kakna, P.S.- Pandaul, Distt.- Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar
2. Smt Pramila Devi W/O Late Shambhu Bhandari Resident Of Village - Ram Chawk Panchayat, Bhauara, Ward No.15, P.S.- Nagar, Distt.- Madhubani. Pin-847212

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajeev Prakash, Adv.
For the Respondent/s : Mrs. Usha Kumari 1, Spl.PP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 11-12-2024

Heard the parties.

2. This appeal is directed against order taking cognizance dated 16.09.2021, whereby appellants charged for offence u/s 341, 323, 354(B)/34 I.P.C & 3(i)(r)(w)/3(2) (va) SC/ST Act, passed by 1st Additional District Judge cum Special Judge, SC/ST Act, Madhubani in FIR bearing Madhubani Nagar P.S Case No-64/19, GR No.22/2019, which is passed by modifying order taking cognizance dated



15.03.2021 passed by 1st Additional District Judge cum Special Judge, SC/SCT Act, Madhubani in FIR bearing Madhubani Nagar P.S Case No-64/19, GR No.22/2019, by ignoring the findings in the police's final investigation report, regarding no sufficient evidence against the appellants.

3. Learned counsel for the appellant submitted that the present case was filed with oblique and ulterior motive as to counter the criminal case lodged by appellants and his nephew which was registered as Madhubani (Town) P.S. Case No. 59 of 2019 dated 10.02.2019 and also Madhubani (Town) P.S. Case No. 61 of 2019 dated 11.02.2019, where son of the informant is also an accused. It is submitted that informant is admittedly not the member of Schedule Caste community but by introducing a stranger namely, Anita Devi, who is the member of Schedule Caste community, who said to entered into the occurrence to save the informant and as she received some injuries during the occurrence, the present case was lodged under SC/ST (POA Act), 1989, otherwise there was no occasion to register this case under the provisions of atrocities Act as defined within the meaning of



SC/ST (POA Act), 1989. It is submitted that this case was lodged in planned and formulated manner and same can be easily understood as how this case under the provisions of SC/ST (POA Act), 1989 was lodged by introducing a stranger to crime in question.

4. It is further submitted by learned counsel that the medical report of injured informant categorically stated that no “obvious injury” was found upon her, which makes entire allegation of assault as alleged against appellants false on its face. It is further submitted by learned counsel that the appellants purchased the land as mentioned under Annexure P/3 series (A,B,C,D) from one Mahant Markendey Das and Gopal Das. It is pointed out that after death of Mahant Markendey Das, Gopal Das started to create troubles *qua* possession of appellants on said purchased land and in furtherance of same, making informant instrumental, lodged present false case.

5. It is submitted that dispute in issue is purely civil in nature for which civil remedies are available and it has been given a criminal color only to create a legal pressure as to get



compromise the land issue out of Court with favorable terms and conditions as set by informant and offences.

6. In support of aforesaid submissions learned counsel for the appellant submitted that the cognizance as taken by learned trial court under SC/ST (POA Act), 1989 is bad in eyes of law.

7. In support of his submission learned counsel for the appellant relied upon the legal reports of Hon'ble Supreme Court as available through ***Gulam Mustafa vs. State of Karnataka and Anr.*** reported in ***2023 SCC OnLine SC 603*** and ***Hitesh Verma v. State of Uttarakhand*** reported in ***(2020) 10 SCC 710***.

8. Submitting further, it is pointed out by learned counsel for the appellant that police after investigation submitted final form in this case *qua* appellants but learned trial court took cognizance by deferring with police report without explaining any reasons and on this score alone cognizance order dated 16.09.2021 is bad in eyes of law and same is liable to be set aside/quashed.

9. Mrs. Usha Kumari 1, learned Spl.PP, while



arguing on behalf of the State submitted that initially in this case cognizance was taken in this case vide order dated 15.03.2021 for the offence under section 341, 323, 307, 354A/34 of the IPC and also 3(i)(r)(w)/3(2)(va) of SC/ST (POA Act), 1989 but subsequently on 16.09.2021 the learned trial court removed Section 307 of the IPC from the cognizance order saying that it was mentioned due to typographical error. It is submitted that cognizance dated 16.09.2021 is reasoned order as same was taken after perusal of restatement of the informant and also the other prosecution witnesses who completely supported, the fact of confinement, physical assault and outraging modesty of the informant. It is submitted that during occurrence Anita Devi, who is a member of Schedule caste community came to rescue the informant and she was also assaulted by appellant/accused and therefore the cognizance was also taken under SC/S Act by the learned trial court but she fairly conceded that the informant is not the member of Schedule caste community. It is submitted that for taking cognizance for the offence under Section 323 of the IPC no inquiry report



is required. It is submitted that out of FIR and also from restatement of the informant, there is sufficient material to make out a *prima-facie* case as to take cognizance, for the offence under Section 341, 323, 354B/34 of the IPC.

10. In aforesaid context, it would be apposite to reproduce para 34 of the legal ratio as approved by Hon'ble Supreme Court as available through ***Gulam Mustafa case (supra)***, which reads as follows:-

34. *Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a 3-Judge Bench of this Court, in Ramawatar v. State of Madhya Pradesh, 2021 SCC OnLine SC 966, has held that the mere fact that the offence is covered under a 'special statute' would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below:*

"15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional



safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."

11. In aforesaid context, it would be further apposite to reproduce para 14 and 17 of the legal ratio as approved by Hon'ble Supreme Court as available through ***Hitesh Verma case (supra)***, which reads as follows:-

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) [Ed. : This sentence appears to be contrary to what is stated below in the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below: “Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view.”] . The Court held as under : (SCC pp. 443-44, para 28)

“28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a “chamar”) when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the 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, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the



expression “place within public view” with the expression “public place”. A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies.”

17. *In another judgment reported as Khuman Singh v. State of M.P. [Khuman Singh v. State of M.P., (2020) 18 SCC 763 : 2019 SCC OnLine SC 1104] , this Court held that in a case for applicability of Section 3(2)(v) of the Act, the fact that the deceased belonged to Scheduled Caste would not be enough to inflict enhanced punishment. This Court held that there was nothing to suggest that the offence was committed by the appellant only because the deceased belonged to Scheduled Caste. The Court held as under:*

“15. As held by the Supreme Court, the offence must be such so as to attract the offence under Section 3(2)(v) of the Act. The offence must have been committed against the person on the ground that such person is a member of Scheduled Caste and Scheduled Tribe. In the present case, the fact that the deceased was belonging to “Khangar” Scheduled Caste is not disputed. There is no evidence to show that the offence was committed only on the ground that the victim was a member of the Scheduled Caste and therefore, the conviction of the appellant-accused under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is not sustainable.”

12. Accordingly, it transpires from above discussed fact that the informant is not a member of Schedule



caste community, where occurrence *prima-facie* appears out of land disputes in terms of “ Annexure P/3 series (A,B,C,D)”. The case of appellant also appears lodged prior to lodging of this case. It is an admitted position that two FIRs were lodged against the son of the informant by appellants, soon before this case, therefore, the occurrence cannot be disputed straightaway. Informant being a lady also supported through her restatement regarding allegation of outraging her modesty and physical assault. Therefore, this Court did not find any apparent reason to interfere with the cognizance order *qua* offences under Sections 341, 323 and 354-B/34 of the IPC.

13. But, from aforesaid discussed fact and guiding legal note it can be said safely that cognizance for the offences under Section 391)(r)(w)/3(2)(v-a) of SC/ST Act, against appellants are bad in eyes of law, and therefore, same stands quashed *qua* appellants.

14. Accordingly, learned District Judge, Madhubani is directed to take appropriate steps in administrative side to transfer aforesaid case before the Court



of concerned Jurisdictional Magistrate within 15 days of receiving of the copy of this order for trial and disposal, in accordance with law.

14. Accordingly, present criminal appeal allowed partly in aforesaid terms.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2024
Transmission Date	13.12.2024

