

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.944 of 2018

Arising Out of PS. Case No.-43 Year-2013 Thana- SC/ST District- Gaya

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1. Deo Shanker Vajpayee @ Deo Shankar Bajpayee and Ors son of Late Ramawtar Bajpayee, R/o House No. 22/118, Damodar Nagar, P.S.- Barra, District- Kanpur, presently residing at Mohalla Bageshwari, P.S. Delha, District- Gaya.
 2. Baidhnath Jha @ Baijnath Jha, son of Late Thakur Jha, R/o Ward No. 4 Mohalla Chotki Nawada, Pretshila Road, P.S.- Delha, District- Gaya.
 3. Lalji Singh, son of Late Ram Sundar Singh, R/o Qr.No. 262 F, Loco Colony, P.S. Delha, District- Gaya.
 4. Vinay Shanker Prasad @ Binay Shanker Prasad, son of Yadunath Prasad, R/o 47, Mohalla Chotki Nawada, P.S.- Delha, District- Gaya.
 5. Ajay Gupta, son of Late Ramjas Gupta, R/o 181, Dakhindari Road, Sreebhumi, North Parganas, West Bengal- 700048 presently residing at Mohalla Chotki Nawada, Pretshila Road, P.S.- Delha, District- Gaya.
 6. Krishna Singh son of Ram Vilas Singh Resident of House No. 7, Village- Simri, Post- Kalapahad, Simri, Aurangabad.
 7. Ravi Poddar son of Radheshyam Poddar, Resident of Kolu Para Lane, Sakia, Haora Corporation, Haora, West Bengal- 711106.
 8. Sushil Kumar Saraf @ S.K. Saraf, son of Late Shambhu Nath Saraf, Resident of Mohalla Balajee Nagar, Chotki Nawada, P.S. Delha, District Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Phula Devi Shri Munna Choudhary R/o Mohalla-Chotki Nawada(Cotton Mill) P.S.-Delha, Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Krishna Pd. Singh, Sr. Advocate



Mr. Bhashkar Shankar, Advocate
For the Respondent/s : Mr. Sadanand Paswan, APP
For the Opposite Party No.2: Mr. Rajesh Kumar, Advocate
Mr. Sunil Kumar Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 15-01-2024 1. In connection with G.R Case No. 2562 of 2013, Police submitted charge-sheet against the accused persons/petitioners under Sections 147, 341, 323, 379, 427, 504, 506 and 34 of the IPC read with Sections 3(i) (x) (xv) of the SC & ST (Prevention of Atrocities) Act. The learned Chief Judicial Magistrate took cognizance of the offence on 7th of September, 2013 and transferred the case to the learned Judicial Magistrate, 1st Class, Gaya for appearance and commitment. Since the offence under SC & ST (Prevention of Atrocities) Act, is exclusively triable by the learned Special Judge, the case was transferred to the learned Special Judge, Gaya.

2. The present petitioners filed an application under Section 482 of the Cr.P.C, which was registered as Cr. Misc. Case No. 21738 of 2014 before this Court for quashing of the FIR and the charge-sheet. However, during pendency of the said proceedings, it was submitted by the learned Advocate for the petitioners that he might be given liberty to agitate all the issues at the time of consideration of charge praying for discharge



under Section 227 of the Cr.P.C. On the basis of the said submission, the above-mentioned Cr. Misc. Case No. 21738 of 2014 was dismissed as withdrawn. Subsequently, the petitioners filed an application under Section 227 of the Cr.P.C., stating, *inter alia*, that even assuming that the accused persons abused the *de facto* complainant making aspersion on their caste, it was not made within the public view and accordingly the learned Trial Judge failed to consider the said fact and erroneously framed charge under Sections 3 (i) (x) (xv) of the SC & ST (Prevention of Atrocities) Act.

3. The learned Advocate for the petitioners submits that the *de facto* complainant resides on a portion of land owned by NLBD Company and the husband of the *de facto* complainant is an employee of the said company. On the date of occurrence, the petitioners took measurement of the land purchased by NLBD Company. While taking measurement, they entered into the room of the *de facto* complainant. According to the FIR, the *de facto* complainant protested and the accused persons/petitioners abused them saying *Bhuiya or Dusadh or Pasi* etc.

4. The learned Advocate for the petitioners relying on a recent decision of the Hon'ble Supreme Court in the case of



Ramesh Chandra Vaishya vs. State of U.P & Anr. reported in ***(2023) 6 SCR 643*** submits that the incident of using an abusive language allegedly by the petitioners to the *de facto* complainant was inside the room of the *de facto* complainant. Thus, the *de facto* complainant was not abused in public. It is held by the Hon'ble Supreme Court that since the occurrences, if any, made by the appellant were not in any place within public view:-

“The basic ingredient for attracting Section 3 (i) (x) (xv) of the SC & ST (Prevention of Atrocities) Act should be held to be missing or absent.”

5. The learned Advocate for the *de facto* complainant/ Opposite Party No. 2, on the other hand, submits that as per the liberty given to the petitioners in Cr. Misc. Case No. 21738 of 2014, the accused persons raised all the objections as submitted herein before the Trial Court and the learned Trial Court on due consideration of the contention made by the Opposite Party/petitioners rejected their petition under Section 227 of the Cr.P.C. The case is pending at the stage of trial.

6. He further submits that in the FIR, the *de facto* complainant clearly stated that when the accused persons abused her with filthy language taking the name of their caste, she and her little child raised hue and cry which attracted local people.



Thus, the *de facto* complainant was abused in presence and within the hearing of the members of the parties. Therefore, there is no reason to discharge the accused from the charge under Section 3 (i) (x) (xv) of the SC & ST (Prevention of Atrocities) Act.

7. Having heard the learned Advocate for the petitioners and on careful perusal of the FIR and the other materials on record, it appears that the accused persons abused the *de facto* complainant inside her room and then she raised hue and cry which attracted local people. Therefore, before appearance of the local people on the scene of occurrence, the accused persons allegedly abused the petitioners in the name of his caste. Thus, such occurrences was not made within the public view.

8. Moreover, it is no longer *res integra* that saying a particular person his caste in private or in public view is not per se an offence. If a person is told that he/she is a *Bhuiya or Dusadh or Pasi* etc., this is not an accusation when something more is said to the effect that being a *Bhuiya or Dusadh or Pasi* etc., the victim had committed certain offence, such accusation attracts the penal provision under the SC & ST (Prevention of Atrocities) Act.



9. In view of such discussion, this Court is of the view that the accused persons are entitled to be discharged under the penal provision of SC & ST (Prevention of Atrocities) Act.

10. However, trial under the general provision of the penal Code shall continue against the accused persons.

11. The instant revision is thus disposed of.

(Bibek Chaudhuri, J)

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