

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3021 of 2023

Arising Out of PS. Case No.-505 Year-2022 Thana- AMAS District- Gaya

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1. Sanjay Kumar Singh, Son of Late Baburam Singh, Resident of Village Majhauilya, Police Station -Amas, District Gaya
 2. Devendra Singh @ Devendra Kumar Singh, Son of Sheo Pujan Singh, Resident of Village- Sarewa, P.S.- Guraru, District- Gaya
 3. Rashmit Kumar @ Duldul Singh, Son of Anjay Kumar Singh, Resident of Village- Majhauilya, P.S.- Amas, District- Gaya

... .. Appellant/s

Versus

1. The State of Bihar
2. Anup Kumar Ranjan, Teacher, Project Shivbalak Girls Inter School, P.S.- Amas, District- Gaya

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Jitendra Prasad Singh, Adv. Mr. Abhishek, Adv. Mr. Rajeev Kumar Singh, Adv.
For the State	:	Ms. Usha Kumari 1, SPP
For the Informant	:	Mr. Praveen kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

7 26-04-2024

1. Heard learned counsels for the parties.

2. The instant appeal has been preferred against the order dated 01.04.2023 passed by the learned Special Judge, SC/ST Special Court, Gaya, in connection with Amas P.S. Case No. 505 of 2022 by which the cognizance of the offences punishable under sections 341, 323, 504 and 506 of the Indian Penal Code and under section 3(i)(r)(s) of the SC/ST Act has been taken against the appellants.

3. Mr. Jitendra Prasad Singh, learned counsel



appearing for the appellants submits that the respondent no. 2, Anup Kumar Ranjan, filed a petition along with three other persons (applicants) namely Booby Kumud, Gyanti Kumari Gound and Anil Kumar Chanchal against the appellants with allegations and the informant and others whose names find place in the FIR are teachers posted at Shivbalak Girls Inter school, Amas, Gaya and in between them and the principal/headmistress of the said school, there was some dispute/rivalry and before the institution of the FIR, the said principal/headmistress had filed some complaints against the informant and others with some allegations regarding use of filthy/abusive words by the informant and others and the appellant nos. 1 and 2 were posted as clerk and peon respectively at the time of alleged occurrence while the appellant no. 3 is a relative of the appellant no. 1 and they are supporter of the headmistress of the said school on account of which, the FIR was registered against them by the informant. Learned counsel further submits that the allegations made by the informant in the FIR were thoroughly investigated by the investigating officer and the statement of an independent person was also recorded and thereafter, final report in favour of the appellants was submitted however the learned trial court



differing with the conclusion of the police took the cognizance of the alleged offences against the appellants but in this regard, no proper reason has been assigned except reference of some paragraphs but in the said paragraphs, there are statements of the informant and so-called other aggrieved (applicants) and one independent person but the said independent person did not support the informant's allegation. Learned counsel has placed reliance upon the judgment of the Hon'ble Apex Court passed in the Case of **M/s Pepsi Foods Limited vs. Special Judicial Magistrate and Ors.** reported in **AIR 1998 SC 128** and he has referred the paragraph no. 28 of the said judgment which is being reproduced as under : -

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of



allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

4. On the contrary, Mr. Praveen kumar, learned counsel appearing for the respondent no. 2 has vehemently opposed this appeal and submitted that the learned trial court has rightly taken cognizance of the alleged offences and there are four persons being aggrieved of the alleged acts of the appellants including the informant and all of them supported the allegations of the FIR during investigation, upon which the trial court placed reliance while taking cognizance and the same is sufficient to *prima facie* attract the alleged offences.



5. Ms. Usha Kumari No.1, learned SPP appearing for the State has also opposed this appeal.

6. Heard both the sides, perused the order impugned and case diary of the case and also, taking into account the principles of the Hon'ble Apex Court referred to above. As per the FIR, the alleged occurrence occurred in a Girls Inter school situated at Amas, Gaya and the same is alleged to have occurred during the day time when the school was running but during investigation, no one came up to support the allegations of the FIR and in the case diary, there is statement of one independent person who has not supported the allegations of the FIR and in the case diary, except the statements of the informant and other aggrieved (applicants), there is no material to support the allegations of the FIR upon which the learned trial court has mainly placed reliance while taking cognizance of the alleged offences. There are some circumstances which go in favour of the prayer of the appellants. Firstly, as per the above submission, there was some dispute in between the principal/headmistress and informant and other applicants and secondly, the police did not find substance in the allegations made by the informant in the FIR and thirdly, no independent person came up to support the allegations while the alleged



occurrence is said to have occurred in the school premises when the school was running. The learned trial court did not assign the proper reasons except referring some paragraphs of case diary mainly containing the statements of the informant and other applicants (aggrieved) while differing with the conclusion of the police which was in favour of the appellants and it appears that the cognizance of the alleged offences was taken in mechanical manner. Considering these facts and circumstances, this Court forms the opinion that the informant and others lodged their case with malafide intention and the order impugned appears to have been passed in mechanical manner hence it is hereby set aside and the appeal stands allowed.

(Shailendra Singh, J)

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