

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2863 of 2022

Arising Out of PS. Case No.-16 Year-2021 Thana- SC/ST District- Samastipur

-
-
1. Vijay Kumar Mishra, S/o Surendra Narayan Mishra @ Suresh Mishra.
 2. Ashwani Kumar Mishra @ Rinku Mishra, S/o Late Satya Narayan Mishra @ Satyadev Mishra.
 3. Amresh Kumar @ Guddu Mishra S/o Late Satya Narayan Mishra @ Satyadev Mishra
All are resident of village-Salempur, P.S.- Ujiyarpur, District-Samastipur (Bihar).

... .. Appellants

Versus

1. The State of Bihar
2. Minta Devi, W/o Pappu Sada, Resident of village-Salempur, P.S.- Ujiyarpur, District- Samastipur (Bihar).

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Ranjit Kumar, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, Spl.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-12-2024

The present appeal has been filed for quashing of the order dated 18.09.2021 passed by the learned Special Judge, SC/ST Act, Samastipur in SC/ST P.S. Case No.16 of 2021 arising out of Complaint Case No.188 of 2020, whereby the learned trial court has taken cognizance of the offences punishable under Sections 504/34 of the Indian Penal Code (for short "IPC") and Section 3(1)(r) read with 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention



of Atrocities) Act, 1989 (for short “SC/ST Act, 1989”) against the appellants and others.

2. Vide order dated 18.07.2023, this Court issued notice to the informant/respondent no.2. Despite of same, none appears to join the present court proceedings on behalf of informant/respondent no.2.

3. The case of prosecution as per complaint, is that when complainant was preparing food in her house, all co-accused persons/appellants entered her house and using abusive language asked her regarding whereabouts of her mother-in-law. Due to fear, she said that it is not in her knowledge. It is alleged that appellant no.1, namely Vijay Kumar Mishra said that he will commit rape upon her, today. In the meantime, the accused persons assaulted the complainant and forced her to put down her clothes having intention to commit rape and climbed on her body. It is further alleged that co-accused Rinku Mishra began to rub the breast of the complainant and Guddu began to sucking the cheek of the complainant. It is further alleged that when her sister-in-law came for rescue, the co-accused Ashok Shah



abused the complainant and suck the lips of her sister-in-law. Thereafter, the accused persons gave threatening to the complainant that if you inform anybody about this, then all will be killed with firearm and thereafter all accused persons abused the complainant by her caste name also.

4. It is submitted by learned counsel appearing on behalf of the appellants that the present complaint case was filed in the background of land dispute as to create extra legal pressure to set out a favourable terms and conditions to compromise land dispute out of court, otherwise there was no occasion to file present criminal case. It is submitted that the civil dispute of parties, through present criminal case was given a criminal colour, which is not permissible under the law. It is pointed out that through present complaint petition No. 188 of 2020, which is the basis of present FIR, the allegation of attempt of rape was also raised against all appellants but, during investigation, said allegation was found false and after investigation, the police submitted charge-sheet for the offences punishable under Section 504/34 of the IPC and Sections 3(1)(r)(s)/3(2)(va) of the SC/ST Act, 1989.



5. In support of aforesaid submissions *qua* land dispute, it is pointed out that prior to lodging this case, a criminal case was also lodged by mother-in-law of this informant/complainant, namely, Asha Devi, wherein the appellants including other accused persons were directed to enlarge on bail by one of the learned co-ordinate Bench of this Court through Criminal Appeal (SJ) No.546 of 2020 dated 16.12.2020 and being aggrieved with aforesaid order, the present false criminal case was filed to pressurize the appellants again under the garb of false criminal implication. It is submitted that the father of appellant no.1, namely, Surendra Kumar Mishra moved an application before the Circle Officer, Ujiyarpur, Distt.-Samastipur for demarcation of the land, which was adjacent to the land of informant/respondent no.2, which was accordingly demarcated by the Circle Officer and being aggrieved with said demarcation of Circle Officer, the father-in-law, mother-in-law and husband of the informant/complainant preferred an appeal before D.C.L.R. Dalsingsarai, which was registered as Case No.64 of 2014. It is submitted that the D.C.L.R.



further directed to the concerned Circle Officer for fresh demarcation in presence of concerned parties.

6. With aforesaid background of present criminal litigation, it is submitted by learned counsel that present criminal prosecution was initiated with oblique motive and also with *mala fide* intention. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through **Gulam Mustafa vs. State of Karnataka and Anr. [2023 SCC OnLine SC 603]**.

7. It is also pointed out by learned counsel that the present occurrence not appears to be arises out of atrocities as to attract any offence under the SC/ST Act, 1989. Moreover, the narration of complaint petition, which is the basis of present FIR, nowhere disclosed on its facial perusal that the abuse as alleged in caste name was given in public view. In support of his submission, learned counsel has relied upon the legal report of Hon'ble Supreme Court as available through **Hitesh Verma v. State of Uttarakhand and Anr., [(2020) 10 SCC 710]**.

8. In view aforesaid submissions, it is submitted that continuing with such criminal proceedings would only



amount to abusing the process of law and, therefore, the impugned order of cognizance dated 18.09.2021 is fit to be quashed/set aside.

9. Mr. Sadanand Paswan, learned Spl.P.P. appearing on behalf of the State while opposing the present appeal submitted that the complaint petition nowhere disclosed that there was any land dispute pending between the parties. It is submitted that the element of threat and also abusive language is available there as to attract the *prima facie* case under Section 504 of the IPC and also for the offences under the SC/ST Act, 1989. However, he could not disputed the factual aspect as submitted above by learned counsel appearing for the appellants.

10. At this stage, it would be apposite to re-produce para-34 of the legal report of **Gulam Mustafa case** (supra), which is as under:-

“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. It would further be apposite to reproduce para- 13 and 14 of the legal report of Hon'ble Supreme Court as available through **Hitesh Verma case** (supra), which are as under:-

“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 [(2008) 8 SCC 435]. 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, 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 :-

“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.”

12. It appears from perusal of record and out of submission that the parties are in litigating terms since 2010 when first time the father of appellant Vijay Kumar Mishra,



namely, Surendra Kumar Mishra moved an application before the Circle Officer, Ujiyarpur for demarcation of the land, which was adjacent to the land of informant/respondent no.2. After physical verification, the demarcation was ordered by Circle Officer but, being aggrieved with said demarcation, father-in-law and husband of informant preferred appeal before the D.C.L.R., Dalsingsarai. At that point of time also, the mother-in-law of the informant lodged criminal complaint case against all appellants and their family members, which was registered as Samastipur P.S. Case No.176 of 2019, wherein the accused persons including all above-named three appellants granted bail by this Court through Criminal Appeal (SJ) No.546 of 2020 dated 16.12.2020 and as to create further legal pressures *prima facie* to give criminal colour to civil dispute. The present criminal case was filed by the informant/respondent no.2, who was the daughter-in-law of complainant Asha Devi, who filed earlier criminal complaint case bearing No.176 of 2020. The husband of informant also filed appeal along with his father, who is none but the father-in-law of the complainant/respondent no.2 against the order



of Circle Officer, Ujiyarpur. All these facts suggest that there was long pending land dispute between the parties. During investigation, the allegation of attempt to rape was not found true. The narration of complaint upon facial perusal *prima facie* suggest that abuse in caste name was made while complainant was alone. Merely on the fact that occurrence took place in the house of the complainant, it cannot be said that the abuse was made in public view.

13. It would further be apposite to reproduce para-102 of the legal report of Hon'ble Supreme Court as available through **State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]**, which is as under:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to



secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2)



of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. From the factual and settled legal ratio, as discussed above, it transpires that the present complaint case was lodged *prima facie* in the background of land dispute, where caste name abuse *prima facie* not appears in public view, therefore, by taking shelter of **Gulam Mustafa case** (supra) and also **point no. (v) and (vii)** of para No.



102 as set out through **Bhajan Lal case** (supra), the cognizance order dated 18.09.2021 as passed by the learned Special Judge, SC/ST Act, Samastipur in SC/ST P.S. Case No.16 of 2021 arising out of Complaint Case No.188 of 2020 so far as appellants are concerned, is hereby quashed and set aside.

15. The present appeal stands allowed.

16. Let a copy of this judgment be sent to the concerned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2024
Transmission Date	18.12.2024

