

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.998 of 2021

Arising Out of PS. Case No.-23 Year-2020 Thana- FESHAR District- Aurangabad

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BITU PAL @ BITTU PAL @ BITU KUMAR Son of Sri Niwas Pal @ Sri
Niwas Bhagat Resident of Village - Parariya, P.S.- Fesar, District -
Aurangabad.

... .. Appellant/s

Versus

1. The State of Bihar
2. Jogendra Paswan son of Chanarik Paswan Resident of village-Padariya,P.S-
Fesar, District-Aurangabad

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Leelawati Kumari, Advocate
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

13 05-03-2024

1. Heard the parties.

2. The instant appeal has been preferred under
Section 14A(1) of Scheduled Castes and Scheduled tribes
(Prevention of Atrocities) Act (in short 'SC/ST Act') against
the order dated 24.09.2020 passed by Special Judge SC/ST
Act-cum-A.D.J.-I, Aurangabad, in connection with Feshar
Case No. 23 of 2020 registered under Sections 147, 341, 323,
379 and 504 of the Indian Penal Code (in short 'IPC') and
Section 3(i)(r)(s), 3(2)(va) of SC/ST Act.



3. By order impugned the learned trial court has taken cognizance of the offences punishable under Sections 147, 341, 323, 379, 504 of the Indian Penal Code and Section 3(i)(r)(s), 3(2)(va) of SC/ST Act against this appellant and others and in this appeal a prayer has been made to quash the said order only to the extent of the appellant.

4. Ms. Leelawati Kumari, learned counsel appearing for the appellant submits that altogether 9 persons including the appellant have been named in the FIR but any specific role or overt act of this appellant has not been revealed in the FIR and the allegation levelled against him is general and omnibus and during investigation, the police examined the important witnesses who stated that appellant was not involved in the commission of the alleged occurrence so in view of this evidence, the appellant was not sent up by the police but thereafter the learned trial court took cognizance of the alleged offences against this appellant in mechanical manner and in the order impugned several paragraphs have been referred but none of these paragraphs shows the appellant's active and specific involvement in the commission of the alleged occurrence and several paragraphs among them are formal in nature. It is further submitted that there is case and counter



case in between both the parties and an occurrence of free fight took place in between both the parties and three persons from appellant's side also sustained injury in the said occurrence.

5. No body appears on behalf of respondent no.2 despite the notice sent through ordinary process having been validly served upon him.

6. No body appears on behalf of State.

7. Heard learned counsel for the appellant and perused the order impugned as well as the case diary. In the FIR, there is no specific allegation against the appellant and allegation of abusing the informant by using his caste name is general and omnibus against this appellant and during investigation, some important witnesses stated that the appellant was not involved in the commission of the alleged occurrence and consequently he was not sent up by the police and while taking cognizance of the alleged offences against the appellant, the learned trial court has placed reliance upon the paragraph nos. 1, 2, 3, 4, 5, 6, 7,8, 43, 55, 58 and 67 of the case diary. Out of these paragraphs the paragraph nos. 43, 55, 56, 58 and 67 are not relevant to show the appellant's active participation in the commission of the alleged occurrence and



the contents of these paragraphs appear to be formal in nature and several witnesses whose statements are mentioned in the paragraph nos. 12, 13 and 14 of the case diary stated that the appellant was not involved in the commission of the alleged occurrence.

8. In view of above discussed facts, this court does not find even prima facie materials to show the appellant's involvement in the alleged occurrence and the learned trial court has taken cognizance of the alleged offences against the appellant in mechanical manner. Hence, the order impugned summoning the appellant for the alleged offences of which cognizance has been taken stands set aside but only to the extent of the appellant and further proceedings, if any, have arisen against the appellant in pursuant to the order impugned shall also stand set aside to the extent of appellant.

9. In the result, the instant appeal stands allowed.

(Shailendra Singh, J)

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