

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4362 of 2021

Arising Out of PS. Case No.-28 Year-2018 Thana- SC/ST District- Rohtas

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1. Pushpa Devi Wife Of Ashok Kumar Singh @ Ashok Kumar Resident Of Village- Kulhadiya, P.S.- Koilwar, District- Bhojpur (Ara), At Present Railway Quarter No.168b, Dehri, P.S.- Dalmia Nagar, District- Rohtas.
 2. Ashok Kumar Singh @ Ashok Kumar Son Of Late Ram Govind Singh Resident Of Village- Kulhadiya, P.S.- Koilwar, District- Bhojpur (Ara), At Present Railway Quarter No.168b, Dehri, P.S.- Dalmia Nagar, District- Rohtas.
 3. Prateek Kumar @ Kumar Ritik Son Of Ashok Kumar Singh @ Ashok Kumar Resident Of Village- Kulhadiya, P.S.- Koilwar, District- Bhojpur (Ara), At Present Railway Quarter No.168b, Dehri, P.S.- Dalmia Nagar, District- Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar
2. Manti Devi Surendra Prasad Paswan R/O Village-Dhelabad, P.S.-Rohtas, District-Rohtas

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur Mr. Pravin Kumar
For the Respondent/s	:	Mr. Jharkhandi Upadhyay Mr. Rudra Deo

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 28-10-2024 This memo of appeal is directed against the order dated 24.03.2021 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act), Rohtas at Sasaram in Case No. 110 of 2018 arising out of SC/ST Dehri P.S. Case No. 28 of 2018 by which the court below after differing with the final form took cognizance against the appellants for facing trial under Sections 341, 323, 504 of the Indian Penal Code and



Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. As per the prosecution case, all the accused persons came at the house of the informant and enquired about her husband and started abusing her by using casteist words and slapped her. One Ashok Kumar Singh pulled her hair and threw her down and said that you people are of a lower caste and if you look at me while I am getting up or sleeping, it becomes inauspicious and all my work gets spoiled. One Pushpa Devi snatched the ring and assaulted her with leg and fist and threw her down. On screaming, Babita Devi, wife of Baban Paswan and Shanti Devi, working in Ashok Kumar Singh's house, reached there. All of them ran away from there spitting on her body and threatened her to vacate the camp and run away or else they will get her husband killed. On 16.03.2018, Pushpa Devi started abusing the informant by calling her Dusadh, Chamaar and said that you are a thief and a child of a Chuhad.

3. Learned counsel for the appellants has submitted that the appellants are innocent and they have falsely been implicated in the present case and the present case is nothing but a counter blast of the case lodged by one of the appellants and even during investigation, the police found that when notice was



issued by the police in the said case, as a counter blast, the present case was filed and accordingly police submitted final report which will be evident from the facts. He further submits that earlier the appellant no. 02 has lodged a case bearing Dalmia Nagar P.S. Case No. 1073 of 2017 under Sections 457, 380 of the Indian Penal Code against Rajesh Kumar, Surendra Prasad, Babban Paswan and son of his maid who was working in the house namely Chandan. Surendra Prasad is husband of the present informant namely Manti Devi whereas Babban Paswan is the husband of the witness of the present case namely Babita Devi and Chandan is the son of the maid of appellant no. 02 namely Shanti Devi.

4. It has been further submitted by the learned counsel for the appellants that in the present case as contained in Annexure-3 lodged by Appellant no.2, the police issued notice dated 15.3.2018 to Upendra Kumar to appear at the police station and Upendra Kumar is the own nephew of the present informant Manti Devi as father of Upendra Kumar namely Vijendra Paswan and husband of present informant namely Surendra Prasad are own brother and are living together and notice was issued to Upendra Kumar to appear and give statement in Dalmia Nagar P.S. Case No.1073 of 2017. He



further submits that the notice which was given to Upendra Kumar, was received by the present informant Malti Devi which is also evident from the notice vide Annexure-4 and thereafter she lodged the present false case on 17th March 2018 i.e. the date on which Upendra Kumar was asked to appear at the police station.

5. It has been further submitted by the learned counsel for the appellants that the entire allegation leveled in the first information report is out-and-out a false allegation and the same has been lodged only with a view to harass and humiliate the appellants because earlier Appellant No.2 lodged a case against her husband and others in which during investigation name of her nephew had also transpired who was asked to appear before the police.

6. It has been further submitted by the learned counsel for the appellants that Appellant No.2 has also filed an informatory petition before Sub Divisional Judicial Magistrate, Dehri being Misc. Case No.22/18 under section 289 of the Code of Criminal Procedure against Surendra Prasad (husband of the present informant) and Babban Prasad in which he stated inter-alia that they are the member of schedule caste and they are putting pressure to withdraw the case and compromise the same



otherwise they will lodge case against him, his wife and son. He further submits that the Appellant No.2 is working in Indian Railway and he was on duty on 14th January 2018 and the same is also evident from his attendance register of the month of January 2018 and an attested copy is issued to the appellant no.2 by his controlling authority and similarly appellant no.3 is an Assistant Professor in Anugrah Narayan Smarak College, Navi Nagar, Aurangabad and on the date of occurrence he was on duty in his college. The Principal of the College has issued a certificate to that effect dated 20.05.2018.

7. It has been further submitted by the learned counsel for the appellants that present informant is in habit of filing such types of cases and earlier filed a complaint against the controlling authority Mr. Ratnesh, who was then posted as Assistant Signal and Telecom Engineer but the police did not institute any case and thereafter the present informant lodged Complaint to SC/ST Commission, New Delhi as well as to Divisional Railway Manager, Mughalsarai.

8. It has been further submitted by the learned counsel for the appellants that in the present case while differing with the police report, the learned Special Judge has said that the witnesses Babita Devi, Shanti Devi and Raj Kishore Prasad



supported the prosecution allegation ignoring the fact that the Babita Devi, Shanti and Raj Kumar are family members who were made accused in the previous case where Raj Kishore Prasad is own nephew of Surendra Prasad i.e. husband of the informant and witness Asha Devi is own sister-in-law (Nanad) of the present informant. He further submits that during investigation police also found that when notice was issued by the police to the family member of the present informant to appear at the police station in a case lodged by Appellant no.2, in retaliation the present case was lodged.

9. In support of his submissions, learned counsel for the appellants has also relied upon the judgment of Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate* reported in (1998) 5 SCC 749, and the judgment of this Court passed in the case of *S.M. Mahtab Ahmed Vs. The State of Bihar* reported in 2016 (4) PLJR 508 and has contended that the learned Magistrate while differing with the final form must give reasons and any order of cognizance differing with the final form bereft of reasons is no order in the eye of law.

10. Learned counsel for the State and learned Spl. PP for the SC/ST Act opposed the application of the appellants and



have submitted that cognizance has rightly been taken and no interference is required in this order.

11. I have heard and considered the submissions of the parties.

12. From the facts of the case, it is clear that after investigation police has submitted the final form and found the case to be false. The Special Judge has taken cognizance differing with the police report without assigning any reasons.

13. The Hon'ble Supreme court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate (Supra)***, has held as follows:-

"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 on 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 scrutinize 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."

14. This Court in its judgment passed in the case of ***S.M. Mahtab Ahmed Vs. The State of Bihar (Supra)*** in paragraph nos. 8 and 9 has held as follows:-

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record including the Lower Court Record. After going through the record, it is evident that the complaint petition was thoroughly investigated by the Investigating agency and thereafter, it was found that it was not a case of criminal offence, rather the investigating officer had noticed that it was a civil dispute. Accordingly petitioner's name was not included in column no. 11 of the charge sheet. Meaning thereby that petitioner was not forwarded as accused in the case and final report was submitted. So far as point, which has been raised by the learned counsel for the complainant that even in business transaction, there can be case of criminal offence, this Court is in agreement with his submission, but in the present case, the case was investigated thoroughly by the statutory investigating agency and no sufficient material was found to forward the petitioner to face trial and his name was not incorporated in the charge-sheet as accused. The learned Chief Judicial Magistrate though was competent to pass



order of cognizance differing with the police report, it was essential on his part to assign reason succinctly for differing with the police report On perusal of the impugned order the Court is satisfied that no reason has been assigned by the learned Magistrate and as such, on this very point, the order of cognizance is liable to be set aside.

9. It goes without saying that if an investigating agency after thorough investigation submits final report exonerating accused persons, the said report may not be treated as waste paper Once such report is submitted, the learned Magistrate at the time of differing with the police report is required to assign succinct reason. Since in the order impugned, no reason has been assigned, the Court is satisfied that order impugned is liable to be set aside, particularly; in view of nature of accusation, as has been levelled in the complaint petition.

15. Upon perusal of the impugned order, it is clear that no reasons has been assigned to differ with the final form and none of the materials of the case diary have been discussed by the Special-Judge, therefore, the order taking cognizance is bad in law and the same cannot be sustained.

16. Accordingly, the order dated 24.03.2021 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act), Rohtas at Sasaram in Case No. 110 of 2018 arising



out of SC/ST Dehri P.S. Case No. 28 of 2018 is hereby set aside.

17. This appeal stands allowed.

(Sandeep Kumar, J)

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