

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3628 of 2023

Arising Out of PS. Case No.-3 Year-2022 Thana- SC/ST District- Samastipur

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1. GAURI SHANKAR TIWARI SON OF LATE RAM SWARATH TIWARI
RESIDENT OF VILLAGE - DUDHPURA, P.S. - SAMASTIPUR
MUFFASIL, DISTRICT - SAMASTIPUR
 2. MUKESH KUMAR SON OF GAURI SHANKAR TIWARI RESIDENT OF
VILLAGE - DUDHPURA, P.S. - SAMASTIPUR MUFFASIL, DISTRICT -
SAMASTIPUR
 3. GAUTAM KUMAR SON OF GAURI SHANKAR TIWARI RESIDENT
OF VILLAGE - DUDHPURA, P.S. - SAMASTIPUR MUFFASIL,
DISTRICT - SAMASTIPUR
 4. RINA DEVI WIFE OF GAURI SHANKAR TIWARI RESIDENT OF
VILLAGE - DUDHPURA, P.S. - SAMASTIPUR MUFFASIL, DISTRICT -
SAMASTIPUR

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. RAM SAJJAN SHARMA SON OF LATE DEV NARAYAN THAKUR
RESIDENT OF VILLAGE - DUDHPURA, P.S. - SAMASTIPUR
MUFFASIL, DISTRICT - SAMASTIPUR

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Anirudh Kumar Sinha, Advocate
For the State	:	Mr. Sadanand Paswan, APP
For the Respondent No.2:	:	None

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 23-01-2024 1. Heard learned counsel for the Appellants and
learned APP for the State.

2. The instant appeal has been preferred for quashing
the order dated 24.05.2022 passed by the court of learned
Special Judge, SC/ST Act, Samastipur in Samastipur SC/ST P.S.
Case No. 03/2022 whereby and whereunder the learned trial
Court has taken cognizance of the offences punishable under



Sections 341, 323, 504 read with Section 34 of the Indian Penal Code and Sections 3(1)(r)(s)(f)(g), 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the appellants and others.

3. Mr. Anirudh Kumar Sinha, learned counsel appearing for the appellants submits that the respondent no. 2 namely, Ram Sajjan Sharma filed an application at Samastipur SC/ST Police Station on 07.01.2022 alleging therein that his father had purchased 5 Kathha land in question on 13.01.1965 which is in his possession and out of the said land 1 Kathha land has been sold by the appellants and it has been claimed by the informant that he belongs to “LOHAR” caste which comes in the purview of Scheduled Tribes community. Further submission is that it has been alleged by informant/respondent no. 2 that on 05.01.2022 the accused persons who are here appellants, started putting soil over the land of the informant with an intention to grab the said land and when an objection was made by the informant against their act, then the appellants used caste based abusive language against him by calling his caste name “LOHAR” and assaulted him by slapping and also threatened him, but the said allegation does not attract the offences of SC/ST Act.



4. It has been argued by learned counsel for the appellants that respondent no. 2 does not belong to Scheduled Tribe and in this regard Judgment of *Hon'ble Supreme Court passed in Sunil Kumar Rai and Others v. the State of Bihar and Others in Writ Petition(Civil) No. 1052 of 2021* may be perused in which it was held by the Hon'ble Apex Court that "LOHAR" does not belong to **Scheduled Tribes** and the said legal aspect was not taken into consideration by the learned Trial Court and other materials available, were also not properly appreciated while taking cognizance of the alleged offences and not only the offences under SC/ST Act but other alleged offences of IPC also do not attract against the appellants and there is even no prima facie material to make out these offences and the respondent no.2 lodged the FIR after the delay of two days without explaining the said delay. It is further submitted that the appellants' land measuring an area of 22 Katthas is located adjacent to the land in question that is 4 Katthas and the informant/respondent no. 2 had cunningly encroached over 2 Katthas land of the appellants and when appellants asked him for the measurement of the land in question in the presence of local people but the respondent no.2 did not agree for measurement and thereafter, he lodged a false case only with an



intention to grab the said 2 Katthas land of the appellants.

5. Nobody appears on behalf of the respondent no.2 while Mr. Sadanand Paswan, learned APP appearing for the State is present and it is submitted by him that the order impugned taking cognizance of the offences of IPC is proper and the same has been passed correctly as the appellants have been chargesheeted for the said offences by the police on account of the material witnesses having supported the allegations concerned to the offences of IPC.

6. Heard learned counsel for the appellants and learned APP for the State and also perused the order impugned and other relevant materials. The respondent no.2 lodged **Samastipur SC/ST P.S. Case No. 03 of 2022** with these allegations that his father Dev Narayan Thakur had purchased 5 katthas land through registered Sale Deed and after purchase the said land has been coming in their peaceful possession and out of the said land, 1 Kathha land has been sold out by him and he belongs to “LOHAR” caste which comes in the purview of Scheduled Tribe. It was further alleged by the respondent no.2 that the appellants who belong to upper caste wanted to grab his land and on 05.01.2022 they were filling soil over his land with an intention to construct a house, thereafter, he objected to their



act and then all of them abused him by taking his caste name and thereafter, at the instigation of accused Raushan Kumar, the appellants slapped him and the accused Raushan Kumar forcefully took out Rs. 2,000/- from his pocket and during that course, the appellant Gauri Shankar Tiwari made an extortion demand of Rs. 1,00,000/- from him and also threatened him. On the basis of said allegations the investigation was started after registering an FIR bearing Samastipur P.S Case No. 03 of 2022 and during investigation, the material witnesses supported the said allegations and finally the police chargesheeted the appellants and there is prima facie sufficient material to attract the alleged offences of IPC against the appellants but so far as the offences punishable **under Sections 3(1)(r)(s)(f)(g),3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act** of which cognizance has also been taken by the trial Court are concerned, the said offences are not made out against the appellants as in view of the principle laid down by the Hon'ble Apex Court in *Sunil Kumar Rai (Supra)*, the **Respondent's caste "LOHAR"** does not come in the purview of **Scheduled Tribes** and to attract the said offences the victim must belong to **Scheduled Castes or Scheduled Tribes**, so, on this legal aspect the cognizance of the said offences appears to



be not proper and legal.

7. Accordingly, the part of the order impugned by which cognizance of the alleged offences punishable under IPC has been taken, appears to be proper and legal and the same does not require any interference from this Court but so far as the other part of the cognizance order by which the cognizance of the offences punishable **under Sections 3(1)(r)(s)(f)(g)/3(2) (va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act** has been taken, is concerned in view of the discussion made in earlier paragraphs the same does not appear to be proper and legal, hence the said part warrants interference from this Court. **Hence, cognizance order's part by which the cognizance of the offences of SC/ST Act has been taken against the appellants is set aside and the rest part of the cognizance order relating to the cognizance of the alleged offences of IPC stands confirmed and valid.**

8. In the result, the instant appeal **stands partly allowed** with aforesaid modification in the impugned order of cognizance.

(Shailendra Singh, J)

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