

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1474 of 2023

Arising Out of PS. Case No.-138 Year-2023 Thana- BAHERA District- Darbhanga

SUSHIL KUMAR CHAUDHARY SON OF MAHESH PRASAD
CHOUDHRY @ MAHESH DUTT CHAUDHARY RESIDENT OF
VILLAGE- AND PO- POKHRAN, PS- BIROL, DIST- DARBHANGA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF POLICE, OLD SECRETARIAT, PATNA BIHAR
2. THE INSPECTOR GENERAL OF POLICE DIRECTOR, DARBHANGA RANGE, DARBHANGA
3. THE DISTRICT MAGISTRATE, DARBHANGA
4. THE SENIOR SUPERINTENDENT OF POLICE, DARBHANGA
5. THE SUB DIVISIONAL POLICE, OFFICER, BENIPUR, DARBHANGA
6. THE STATION HOUSE OFFICER, BAHERA POLICE STATION, DARBHANGA
7. THE INVESTIGATING OFFICER OF BAHERA PS CASE NO. 138 OF 2023 DATED 26-03-2023 ,BAHERA PS, DARBHANGA
8. JAWAHAR PASWAN SON OF LATE FUDDAR PASWAN RESIDENT OF VILLAGE- ANDAULI, PS- ALINAGAR, DIST- DARBHANGA

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Kumar Singh, Adv.
For the State	:	Mr. Sheo Shankar Prasad, SC-8, Mr. Ruchikar Jha, AC to SC-8

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 26-02-2024

Heard learned Advocate for the petitioner as well as
learned APP for the State.

2. In the instant writ petition the petitioner has prayed
for issuance of a writ in the nature of certiorari for quashing of



F.I.R. bearing Bahera P.S. Case No. 138 of 2023, dated 26th March, 2023, instituted for commission of offence under Sections 341/323/384/379/354(b)/420/504/506 of the I.P.C. read with Section 34 of the I.P.C. and Sections 3(1) (r)/3(1)(s)/3(1)(w) and 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and setting aside of the corresponding Charge-sheet No. 321 of 2023, dated 15th May, 2023, filed against the petitioner under the above mentioned Penal provisions.

The petitioner has also prayed for a direction by issuance of a writ of mandamus directing that his arrest in connection with the aforesaid case was in violation of Sections 41 and 41(A) of the Cr.P.C. and also the Judgment of the Hon'ble Supreme Court delivered in the case of *Arnesh Kumar Vrs. State of Bihar*, reported in (2014) 8 SCC 273.

The petitioner has also prayed for a declaratory writ directing his arrest to be violative of Articles 14 and 21 of the Constitution of India.

The petitioner has also prayed for consequential relief.

3. The occasion for the petitioner to approach this Court arose when Police registered Bahera P.S. Case No. 138 of 2023, on the basis of a written complaint submitted by one Jawahar Paswan. In the written complaint, addressed to the S.H.O. Bahera P.S., the



petitioner alleged that one Sushil Kumar Chaudhary, Advocate asked him to come to Benipur Sub-divisional court with Rs. 35,000/-, failing which he threatened to take legal steps against the informant by making a situation which would violate the conditions for bail granted to the informant and thereby sending him to Correctional Home. On 4th March, 2023 at about 2:00 P.M., he and his wife went to Benipur court and met with Advocate Mr. Sushil Kumar Chaudhary. When most of the people left court premises at about 5:00 P.M., the said Sushil Kumar Chaudhary took the informant and his wife under an asbestos shed and asked him to pay Rs. 35,000/-. The petitioner asked him as to why he would pay money to him time and again. He also told him to return his brief. At this, the petitioner abused him taking the name of his caste and assaulted him with fists and blows. He also forcibly inserted his hand inside the pocket of the petitioner to take away money. When he resisted, a tall and a short height men caught his waist and two hands, then the petitioner took away a sum of Rs. 3,000/- by force and started to assault him. The wife of the informant tried to save him, but she was also assaulted by the said two associates of the petitioner. Petitioner Sushil Kumar Chaudhary, kicked her on her back. As a result, the wife of the informant fell down on the ground. Her wearing apparels were



torn. As a result of such assault, they sustained injury and modesty of the wife of the informant was outraged. It is also stated by the informant that since September, 2022 the informant gave a sum of Rs.3,00,000/- by installments to Advocate Sushil Kumar Chaudhary. Thus, he lodged a complaint against the said Sushil Kumar Chaudhary, Suman Kumar Sahu, who was described as a tall man and Krishna Kumar Jha, who was described as a short man.

4. On the basis of said complaint, Police registered Bahera P.S. Case No. 138 of 2023, dated 26th March, 2023 and took up the case for investigation. On completion of investigation, Police submitted Charge-sheet against the petitioner. By filing the instant writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashment of the F.I.R. as well as Charge-sheet.

5. It is also contended by the petitioner that though alleged offence prescribed punishment either up to seven years or below seven years. The Police authority did not act in accordance with the decision of *Arnesh Kumar (supra)* and the petitioner was straightway arrested and produced before the learned Magistrate and remanded to the judicial custody. He was granted bail on 18th May, 2023.



6. Learned Advocate for the petitioner submits that Police submitted Charge-sheet against the petitioner under Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 which runs thus:-

“intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;.”

7. Referring to a Judgment of the Hon’ble Supreme Court in ***Hitesh Verma Vrs. The State of Uttarakhand & Another***, reported in ***2020 (10) SCC 710***, it is submitted by the learned Advocate for the petitioner that the essential ingredient of an offence under Sections 3(1) (r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 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 the Hon’ble Supreme Court in ***Swaran Singh and Ors. Vrs. The State Through Standing Council and Anr.***, reported in ***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 as for e.g. in a lawn, outside a house and a 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, then it would not be an offence since it was not in the public view.

8. According to the learned Advocate for the petitioner, even if the contents of F.I.R. is accepted in its face value, the informant and his wife were allegedly abused in the name of their caste inside an asbestos shed. It was not within the public view. Therefore, allegation under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act cannot stand against the petitioner. So, the F.I.R. and consequent Charge-sheet is liable to be quashed, because no case is made out against the petitioner.

9. On careful perusal of the F.I.R., it appears that the informant alleged that at the time of occurrence the petitioner was in association with two other persons, one tall and another short men, they were named in the F.I.R. as Suman Kumar Sahu and Krishna Kumar Jha. On perusal of the F.I.R., it is ascertained that they were all along present with the petitioner Sushil Kumar Chaudhary. Thus, if the allegation of using abusive words in the name of caste by Sushil Kumar Chaudhary is believed to be true, Police authority did not commit any wrong in registering a case under Section 3(1) (r) of the Scheduled Castes and Scheduled



Tribes (Prevention of Atrocities) Act, because the said Suman Kumar Sahu and Krishna Kumar Jha, were none other than the members of public. Therefore, at the stage of F.I.R., when it is the duty of the Court to see as to whether a prima facie case has been made out against the petitioner or not, the Court can very well rely on the statement made in the F.I.R. itself.

10. It is specifically pointed out by the learned Advocate for the petitioner that the alleged incident took place on 4th March, 2023 and the F.I.R. was lodged on 26th March, 2023, i.e. after about 22 days of the alleged occurrence. There is no explanation of delay made out by the petitioner in the F.I.R. Therefore, F.I.R. should be quashed only on the ground of delay.

11. In this regard, this Court likes to record that delayed F.I.R. is not *ipso facto* liable to be thrown away. In case of delayed F.I.R., there is chance of concoction, embellishment and exaggeration of the incident. Such concoction, exaggeration etc. can only be determined on the basis of evidence that may be adduced by the parties. On perusal of an F.I.R., it cannot be said that only because of delay, the F.I.R. story is liable to be quashed.

12. It is submitted by the learned Advocate for the petitioner that in the charge-sheet the Police Officer cited only four witnesses, amongst them the defacto complainant is CSW.-1,



CSW.-4 is the Investigating Officer, CSW-2 Sanjeev Kumar Jha and CSW-3 Navin Kumar Thakur, were shown as independent witnesses to the occurrence. There is nothing on record that they were present at Benipur court complex on the date and time of occurrence. Thus, the said two witnesses are also manufactured witnesses by the Police. Thus, according to the learned Advocate for the petitioner entire charge-sheet is perfunctory, does not disclose any offence after investigation and liable to be quashed.

13. Learned Advocate on behalf of the State, on the other hand, refers to a counter affidavit filed on behalf of respondent nos. 4 to 7, wherein the action of the Investigating Officer was supported and it is stated that charge-sheet was rightly submitted. In support of his contention, the learned Advocate on behalf of the State refers to a report submitted by the S.D.P.O., Benipur on 24th September, 2023. It is found from the said report that the Investigating Officer as well as the S.D.P.O. examined C.C.T.V. footage of Benipur court premises and found presence of the petitioner as well as the informant in the court premises on the date and time of occurrence.

14. On the other hand, it is vehemently urged by the learned Advocate for the petitioner that in a court premises presence of the petitioner is a very common factor and moreover



he is the Secretary of the local Bar Association. Thus, the learned Advocate for the petitioner did not deny presence of the petitioner on the date and time of occurrence at Benipur court premises. Presence of the informant and his wife can also be ascertained from C.C.T.V. footage.

15. It is not denied that the informant was not a client of the petitioner. As an Advocate, the petitioner can claim material instruction from his client. However, it is not within the legal frame work of a person to demand money from his client and on his failure to satisfy the learned Advocate the client would be abused in the name of his caste, assaulted and with the help of his associates, money would be snatched away from his pocket. In this regard, the learned Advocate for the petitioner draws my attention to the rejoinder filed by the petitioner to the counter affidavit stated above. In the rejoinder, it is stated by the petitioner that in Benipur civil court at Darbhanga number of Advocates are engaged in their legal professions. There are law clerks. The prosecution failed to produce anybody as witness to the occurrence. The Police Officer brought some outsider as chance witnesses in support of the prosecution case. Thus, it is argued by the learned Advocate for the petitioner that the entire criminal proceeding is manifestly attended with *mala fide* and/or the



proceeding was maliciously instituted with an ulterior motive for wrecking vengeance on the petitioner and with a view to spite him due to private or personal grudge.

16. On perusal of the entire materials on record and specially the F.I.R., though, it was a delayed F.I.R., I find that the F.I.R. discloses cognizable offence against the petitioner. Therefore, a specific case was registered and investigation of the case was taken up. It is not denied that the informant was a client of the petitioner. It is the common experience of both the Bar and the Bench that specially in the lower courts, apart from professional relationship a personal relationship grows between an Advocate and his client. A client would think not only twice but hundred and thousand times before making an allegation against his appointed Advocate.

17. Under such circumstances, the F.I.R. cannot be stated as attended with *mala fide* or it was maliciously instituted to wreck vengeance. I have already held that delay in lodging F.I.R., citation of chance witnesses etc. can only be determined during trial on the basis of evidence on record and not at this stage under Article 226 of the Constitution of India.

18. The learned Advocate on behalf of the petitioner rightly argued that the Investigating Officer has failed to carry out



the guidelines of the decision of the Hon’ble Supreme Court in *Arnesh Kumar (supra)*.

19. For violation of the guideline of *Arnesh Kumar (supra)*, the petitioner is at liberty to take appropriate action against the erring Police Officer in accordance with law.

20. For this reason, however, F.I.R. and charge-sheet cannot be quashed.

21. In view of the above discussion, I do not find any merit in the instant writ petition and accordingly the writ petition is dismissed.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

