

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4422 of 2023

Arising Out of PS. Case No.-66 Year-2021 Thana- LAKHNAUR District- Madhubani

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1. Anjani Kumar Mishra @ Pawan Kumar Mishra Son Of Late Ramchandra Narayan Mishra Resident Of Village- Behat Tola Adalpur, Ps- Lakhnaur (R.S. Op), Distt- Madhubani
 2. Aditya Mishra@ Aditya Kumar Mishra Son Of Anjani Kumar Mishra @ Pawan Kumar Mishra Resident Of Village- Behat Tola Adalpur, Ps- Lakhnaur (R.S. Op), Distt- Madhubani

... .. Appellant/s

Versus

1. The State of Bihar
2. Shambhu Kumar Paswan Son Of Sri Kari Paswan Resident Of Village- Laksena, Ps- Phulparas, Distt- Madhubani

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Thakur
		Mrs. Vaishnavi Singh
For the Respondent/s	:	Mr. Sadanand Paswan

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

9 29-07-2024 1. Heard learned counsel appearing on behalf
of the parties.

2. This memo of appeal is directed against
order dated 19.07.2023 passed in connection with G.R.
No. 50 of 2021, arising out of Lakhnaur P.S. Case No.
66 of 2021 passed by learned Additional Sessions
Judge-1 cum- Special Judge, SC/ST Act, Madhubani,
where cognizance for the offence punishable under



sections 341, 323, 308, 504 and 504/34 of the Indian Penal Code and Sections 3(1)(r), 3(2)(va) of the S.C./S.T. (P.O.A.) Act, against the appellants.

3. The crux of prosecution case is that respondent No. 2 namely Shambhu Kumar Paswan lodged a written report addressed to the Officer of R.S. Shivir, Jhanjharpur stating therein that a day earlier i.e. on 17.8.2021 he was in the premises of Shre Ram Janki Mandir, R.S. Shivir, Jhanjharpur. At that time Anjani Kumar Mishra @ Pawan Kumar Mishra, Aditya Kumar Mishra, Seema Mishra alongwith 3-4 unknown persons, having armed with pistol, iron rod, *farsa*, came over there and abused him by caste name and they dragged him out from the premises of temple. Anjani Kumar Mishra @ Pawan Kumar Mishra assaulted him with *farsa* on his head, Aditya Kumar Mishra assaulted him with Tengari at Pakhura and Seema Mishra assaulted him with iron rod at waist and rest unknown persons also assaulted indiscriminately as a result of which he



became injured. They also damaged his motorcycle. Pawan Kumar Mishra is man of criminal type and series of cases are pending against him in the court. Some persons brought him to Jhanjharpur Sub-divisional Hospital and from there he was referred to Darbhanga Medical College Hospital for better treatment and accordingly belated first information report is being lodged.

4. Mr. Ajay Thakur, learned counsel for the appellants submitted that he is not pressing the cognizance order *qua* appellants which was taken against for the offences committed under different provisions of Indian Penal Code (in short I.P.C.,) through order of cognizance dated 19.07.2023, for the present, but the fact of this case certainly speaks that the cognizance as taken for offences under S.C./S.T. (P.O.A.) Act *qua* appellants are bad in eye of law, contrary to the settled legal principles.

5. It is submitted by learned counsel that there



is a property dispute between the appellants/accused and other co-sharers regarding the property of temple, which in year 1951 itself, was declared as a private property in favour of ancestors of appellants.

6. It is further submitted that judgment in favour of ancestors of appellants regarding aforesaid temple premises, which was passed by this High Court reported, as ***AIR (38) 1951 Patna 340***. It is submitted that during course of investigation the informant himself stated that he was authorized to remain inside the temple by the opposite party/agent of appellants namely, Devesh Mishra @ Mapaji @ Mahanth as a care taker of *Ram Janki Mandir*, where the present occurrence took place. It is submitted that the informant was made instrumental on instance of Devesh Mishra @ Mapaji @ Mahanth, being member of schedule caste community as to lodge the present false case under S.C./S.T. Act, 1989, against the appellant to settle his land dispute with appellants/accused which was already



settled through aforesaid judgment of the Hon'ble High Court in the year 1951 itself.

7. It is submitted by Mr. Thakur as the present criminal case was lodged in the background of land dispute and not out of the atrocities as defined within the meaning of S.C./S.T.,(P.O.A.) Act, 1989, therefore by taking guiding note of ***Gulam Mustafa vs. State of Karnataka and Anr.*** reported in ***2023 SCC OnLine SC 603*** the cognizance order dated 19.07.2023 as taken by Id. trial court deserves to be set aside *qua* cognizance for offences under sections 3(1)(r) and 3(2)(va) of the S.C./S.T. (P.O.A.) Act.

8. Learned Spl.P.P. while opposing the submission as, aforesaid submitted that the occurrence supported appears true in view of injury report of informant which appears fully corroborated with the manner and weapons used for alleged assault, but he fairly conceded that from the statement of informant it appears that he was deputed in temple as care taker on



behalf of Devesh Mishra @ Mapaji @ Mahanth.

9. Considering the aforesaid facts and circumstances as cognizance against offences which was taken against the appellants/accused for the offences under I.P.C. was not pressed for the present, accordingly, the prayer to the extent for offences under Indian Penal Code *qua* appellants is hereby dismissed, whereas, the fact of this case clearly suggests that the occurrence alleged took place out of land dispute where the informant *prima-facie* appears instrumental in the hands of agnets/co-sharer of appellant/accused namely Devesh Mishra @ Mapaji @ Mahanth, this occurrence *prima-facie*, not appearing out of atrocities as defined within the Act, accordingly by taking guiding note of ***Gulam Mustafa case (supra)*** the cognizance as taken for the offences under Section 3(1)(r), 3(2)(va) of the S.C./S.T. (P.O.A.) Act with all its consequential proceedings, arising thereof as passed in connection with G.R. No. 50 of 2021, arising out of Lakhnaur P.S. Case



No. 66 of 2021 passed by learned Additional Sessions Judge-1 cum- Special Judge, SC/ST Act, Madhubani, *qua* aforesaid appellants are hereby quashed and setaside.

10. Accordingly, Special Court is directed to take appropriate steps in administrative side, as to send this record to the court concerned for further proceedings *qua* appellants for the offences punishable under Indian Penal Code, as discussed above.

11. Hence, this application stands allowed in part, in aforesaid terms.

(Chandra Shekhar Jha, J)

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