

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.81 of 2023

In
CRIMINAL MISCELLANEOUS No.17113 of 2018

Arising Out of PS. Case No.-43 Year-2014 Thana- SC/ST District- Sitamarhi

VIKASH KUMAR JHA @ VIKAS JHA, Son of Uday Kant Jha, Resident of village - Harsingpur, P.O.- Manik Chowk, P.S.- Runnisaidpur, District – Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Nagina Devi, Wife of Chhedi Baitha Resident of village - Harsingpur, P.O.- Manik Chowk, P.S.- Runnisaidpur, District - Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Ashhar Mustafa, Advocate Miss Anita Kumari, Advocate Mr. Ashish Kumar Ranjan, Advocate Mr. Abu Nasar, Advocate
For the Respondent/s	:	Mr.Binay Krishna, Spl. PP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 18-12-2024

1. Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for setting aside the order dated 07.10.2017 passed by the learned A.D.J. I-cum-Spl. Judge (SC/ST) Act, Sitamarhi, where cognizance was taken for the offences under sections 341, 323, 448, 427, 379, 354, 504/34 of the Indian Penal Code and Sections 3(i)(x)(xi) of SC/ST (POA) Act, in connection with Tr. No. 255 of 2017 arising out of Sitamarhi SC/ST P.S.



Case No. 43/14.

3. Notice was issued to appellant in terms of Section 15A(3) of the SC/ST (POA) Act, 1989, but informant/respondent no. 2 failed to join the proceedings, despite of receiving information *qua* present proceeding.

4. It is submitted by learned counsel Mr. Ashhar Mustafa, appearing for the appellant that prior to lodging this case, one case was also lodged by one Nagina Devi wife of Chhedi Baitha, bearing Runnisaidpur P.S. Case No. 486 of 2014, regarding same occurrence, whereafter the present case was also lodged for said occurrence, which was registered as Sitamarhi SC/ST P.S. Case No. 43/14 on 04.11.2014. It is pointed out that during the course of investigation, police amalgamated both these two cases being of same occurrence and, thereafter, submitted charge sheet against the appellant/accused in present case on the ground of “error of law” and did not sent up them for facing trial separately for this case but learned trial court/special court without assigning any reason took different view and also took cognizance regarding this occurrence. While submitting



further, it is made clear that earlier case was not lodged under SC/ST Act but finally after investigation, charge-sheet was submitted for the offences under SC/ST (POA) Act, 1989. While concluding argument, it is submitted by learned counsel that the present cognizance order is purely bad in eye of law, as already regarding same occurrence, proceeding is pending before the same court. It is further submitted by learned counsel that the appellant in first case i.e. Runnisaidpur P.S. Case No. 486 of 2014, after facing trial acquitted by judgment dated 05.12.2024, Trial No. 147 of 2017.

5. Learned counsel while arguing further submitted that the present 2nd case was filed just to harass the appellant/accused, where occurrence is completely founded upon local dispute and differences. It is also pointed out that the occurrence from facial perusal of FIR cannot be said to be arising out of atrocities as defined within the meaning of SC/ST (POA) Act, 1989.

6. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Pepsi Foods Ltd. v. Special Judicial***



Magistrate, (1998) 5 SCC 749.

7. Learned Spl. PP Mr. Binay Krishna while opposing the appeal could not disputed the fact, as submitted above and further affirmed the fact that in present case, police after investigation submitted final form by supplying reason of “error of law”.

8. It would be apposite to reproduce para no. 28 of the ***Pepsi Foods Ltd.’s Case (supra)***, which reads as under:-

“28. 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 home 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 scrutinise 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.”

9. In view of aforesaid fact and circumstances as



the present case was lodged subsequent to Runnisaipur P.S. Case No. 486 of 2014 regarding same occurrence, where police submitted final form saying “error of law”, continuing with present proceedings would only amount to misusing the process of law. This proceedings further reflects *prima facie* the malafide intention and also the oblique motive of informant/respondent no. 2 *qua* accused/appellant.

10. In view of the aforesaid, present impugned order dated 07.10.2017 passed by the learned A.D.J. I-cum-Spl. Judge (SC/ST) Act, Sitamarhi, by which learned trial court/special court took cognizance against appellant is hereby set aside/ quashed.

11. Accordingly, Appeal stands allowed.

12. Office is directed to send back the trial court records along with a copy of this judgment, forthwith.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2024
Transmission Date	18.12.2024

