

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4382 of 2022**

Arising Out of PS. Case No.-12 Year-2019 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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1. RAHUL KUMAR @ RAHUL JHA S/o Shashidhar Jha @ Shashi Shekhar Jha R/o village- Bikramshila Rampur, P.S.- Kahalgaon, Distt- Bhagalpur.
 2. Gautam Jha @ Gautam Kumar Jha @ Gautam Kumar S/o Shashidhar Jha @ Shashi Shekhar Jha R/o village- Bikramshila Rampur, P.S.- Kahalgaon, Distt- Bhagalpur.
 3. Amar Mishra @ Amrendra Kumar Mishra @ Amrendra Mishra S/o Bhola Mishra R/o village- Goradih, Dariyapur, P.S.- Nathnagar, Distt- Bhagalpur.
 4. Chandan Kumar @ Chandan Mandal S/o Uday Mandal R/o village- Rampur, Lagaon, P.S.- Kahalgaon, Distt- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Raju Kumar Paswan S/o Sri Daresh Paswan R/o Village- Tintenga, Karari, P.S.- Gopalpur, Distt- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sharda Nand Mishra
For the Respondent/s : Mr.Binay Krishna

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 01-07-2024

1. Heard learned counsel for the appellants
and learned Special P.P. for the State as well as learned
counsel for the respondent no.2/informant.

2. This appeal has been filed for setting aside
the order dated 06.05.2022 passed by learned 3rd Addl.
Session Judge-Cum-Special Judge (S.C/S.T. Act),
Bhagalpur in in Complain Case No. 12/2019 (T.R. No.
925/2022) by which Ld. 3rd Addl. Session Judge-Cum-



Special Judge (S.C/S.T. Act) has been pleased to took cognizance and issue summon, who are accused in Complain Case No. 12/2019 (T.R. No.925/2022), under sections 406, 420, 465, 468, 471, 120(B) of IPC and Sections 3 (1) (x) S.C./S.T. Act.

3. Prosecution case in brief is that the complainant is an educated unemployed and was in search of his employment, where he applied in the year 2015 for a job for Indian Army through S.S.C and after physical verification, he was allowed to appear in written examination and further alleged that one friend of the complainant namely Ajay Kumar was also appeared in such examination. It is stated that co-accused Gautam Jha had convinced him that his brother Rahul is in the B.S.F and he will get his job secure, provided each person to pay Rs. 4.5 Lacs, after which complainant alleged to paid Rs. 1.5 Lacs in November 2016 and thereafter paid another installment of Rs. 1.5 Lacs, after which appointment letter was received. It is further



alleged that complainant after paying last installment of Rs. 1.5 Lacs to accused persons went to R.T.S Camp, Indore but when he tried to enter inside the camp, he was informed that his appointment letter is forged and thereafter, went to Hazaribagh where, it was confirmed that appointment letter is forged and further alleged that complainant went to the house of Rahul Jha (appellant) where Gautam Jha was present and again demanded money, on refusal, accused persons abused by the caste name of his father and also abused by the name of his mother as caste of "Dusadh" and further alleged that he also pushed him with life ending threat and told not to come again. It is further alleged that he along with other two persons thus cheated by the accused persons.

4. Learned counsel appearing for the appellants submitted that the present occurrence took place in the month of November 2016, where complainant came to know regarding alleged cheating by appellants/accused persons on 31.03.2017 only. It is



further submitted that even as per narration of the complaint petition, the last occurrence took place on 22.11.2018, where complainant alleged to be assaulted by the appellants/accused and also to be abused by caste name, whereas the present complaint appears to be lodged on 29.04.2019 itself after a gap of about more than six months, as an afterthought out of ulterior and oblique motive.

5. It is further submitted by learned counsel that from perusal of complaint case, it appears that it is almost admitted position that the payment was made in cash for an illegal appointment, for which, the complainant/informant was well aware about. It is submitted that payment as alleged to made to appellant/accused was not supported by any documentary evidence and it is purely and afterthought malicious criminal prosecution, and as such, on the basis of material as available through complaint petition, it cannot be said that any *prima facie* case regarding



cheating is made out against appellants/accused. In support of his submission, learned counsel relied upon the report of ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) Supreme Court Cases 335.***

6. Learned counsel for the appellants further submitted that the last occurrence dated 22.11.2018, when complainant/informant alleged to be abused by appellants/accused persons in their caste name is not appearing to be made in public view and therefore, allegation in this regard is also not sufficient to made out any *prima facie* case. In support of his submission, learned counsel also relied upon the legal report of ***Hitesh Verma Vs State of Uttarakhand and Another***, reported in ***(2020) 10 SCC 710.***

7. Learned APP, duly assisted by learned counsel Mr. Mritunjay Kumar Mishra while appearing on behalf of the complainant/informant submitted that there is specific allegation against appellants/accused to abuse



by caste name to complainant and also to cheat for cash of Rs. 4,50,000/- on pretext of providing a government job.

8. It would be apposite to re-produce para 102 of the ***Bhajan Lal (supra)***, which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first informant report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-



cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent persons can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. It would be further apposite to re-produce paras 14 and 15 of the ***Hitesh Verma (supra)***, which reads as under:

*"14. Another key ingredient of the provision 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 this Court in the judgment reported as Swaran Singh v. State [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] . 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 e.g. in a lawn outside a house, and the 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 (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) [**Ed.** :*



This sentence appears to be contrary to what is stated below in the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below: "Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view."]. The Court held as under : (SCC pp. 443-44, para 28)

"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies."

15. As per the FIR, the allegations of abusing the informant were within the four walls of her building. It is not the case of the informant that there was any member of the public (not merely relatives or friends) at the time of the incident in the house. Therefore, the basic ingredient that the words were uttered "in any place within public view" is not made out. In the list of witnesses appended to the charge-sheet, certain witnesses are named but it could not be



said that those were the persons present within the four walls of the building. The offence is alleged to have taken place within the four walls of the building. Therefore, in view of the judgment of this Court in Swaran Singh [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] , it cannot be said to be a place within public view as none was said to be present within the four walls of the building as per the FIR and/or charge-sheet."

10. In view of the aforesaid factual and legal submissions, as the transaction of cash, as alleged for Rs. 4,50,000/- which was paid for providing government job as a bribe is not appearing supported by any documentary evidence to make out any *prima facie* case *qua* cheating. It further appears that abuse in caste name was not made in public view, hence by taking a guiding note of guideline nos. 1, 5 and 7 of **Bhajan Lal's case (supra)** and also by taking a guiding note of **Hitesh Verma's case (supra)**, the impugned order dated 06.05.2022 passed by the learned 3rd Addl. Session Judge-Cum-Special Judge (S.C./S.T Act), Bhagalpur in Complaint Case No. 12/2019 (T.R. No. 925/2022) is quashed and set aside qua above named



appellant.

11. Hence, appeal stands allowed.

12. Let copy of this judgment be sent to learned trial court immediately alongwith T.C.R., if any.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
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