

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4839 of 2023

Arising Out of PS. Case No.-263 Year-2017 Thana- AGAMKUAN District- Patna

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1. LALLI PRASAD @ LALLI PRASAD YADAV SON OF LATE BHAGWAN DAS RESIDENT OF MOHALLA - KUMHRAR, P.S. - AGAM KUAN, DISTRICT - PATNA
 2. RAMESH YADAV SON OF BHAGWAT PRASAD YADAV RESIDENT OF MOHALLA - KUMHRAR, P.S. - AGAM KUAN, DISTRICT - PATNA
 3. DEENA NATH PRASAD SON OF LALLI PRASAD RESIDENT OF MOHALLA - KUMHRAR, P.S. - AGAM KUAN, DISTRICT - PATNA
 4. MUNNA YADAV SON OF PREM YADAV RESIDENT OF MOHALLA - KUMHRAR, P.S. - AGAM KUAN, DISTRICT - PATNA
 5. RAJ KUMAR @ LILLA SON OF NARESH YADAV RESIDENT OF MOHALLA - KUMHRAR, P.S. - AGAM KUAN, DISTRICT - PATNA

... .. Appellant/s

Versus

1. The State of Bihar
2. BINOD KUMAR CHOWDHARY SON OF SHYAM NARAYAN CHOWDHARY RESIDENT OF MOHALLA - KUMHRAR, P.S. - AGAM KUAN, DISTRICT - PATNA

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Amaresh Kumar
For the Inforamnt		Mr. Bindhyachal Singh
		Mr. Vipin Kumar Singh

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV ORDER

12 27-06-2024 I have already heard the learned counsel for the parties.

2. The appellants being aggrieved by the order dated 02.11.2018 passed by Additional District and Sessions Judge-cum-Special Judge, SC/ST Act, Patna in Special Case No. 440 of 2017, arising out of Agam Kuan P.S.Case No. 263 of 2017, whereby cognizance was taken against the appellants under



Sections 147, 149, 341, 323, 504 and 506 of the Indian Penal Code and Section 27 of the Arms Act, besides Section 3(i)(X) of SC/ST (Prevention of Atrocities) Act, 1989, have filed this appeal.

3. The informant Binod Kumar Chowdhary made allegation that on 05.06.2017 at about 9.30 p.m. Shashi Bhushan Paswan, accompanied by 20-25 persons, came to the house of the informant with a rifle. They attempted to strangle the informant by pressing his throat. They also abused by calling his caste name. They asked the informant as to why they dared to contest the election. They also opened fire.

4. The learned counsel for the appellant submitted that except Shashi Bhushan Paswan, no any person has been named in the FIR. Accused Shashi Bhushan Paswan belongs to the scheduled caste community. As such, no cognizance can be taken against him under the provision of the SC/ST Act. His further submission is that, though the appellants do not belong to SC/ST caste, but the FIR itself shows that this is a false case as there was allegation of firing but none had suffered any kind of injury. The further submission of the learned counsel is that prior to this Case, co-accused Shashi Bhushan Paswan had lodged Agam Kuan P.S. Case No. 262 of 2017 against the



informant with the allegation that the informant Binod Kumar Chowdhary assaulted him and asked him as to why he did not cast his vote in favour of Binod Kumar Choudahry and when Shashi Bhuhan Paswan told him that it was his discretion to cast his vote, Binod Kumar Chowdhary badly assaulted him. The learned counsel also submitted that in that election, the brother of the informant was fighting the election against appellant no.3 and due to the election rivalry, this case has been filed.

5. On the other hand, the learned senior counsel for the informant Mr. Bindhyachal Singh submitted that merely calling the caste name attracts the provision of the SC/ST act and for taking cognizance of the offence, prima facie materiel emerged during the course of investigation is enough. He also submitted that the witnesses in different paragraphs of the case diary have supported the occurrence, as such, there are adequate materials for taking cognizance and there is no illegality in the impugned order dated 02.11.2018, whereby the cognizance has been taken against the appellants and co-accused Shashi Bhushan Paswan.

6. It is an admitted fact that both the parties were contesting election. Prior to the present case, a case had been lodged on behalf of the co-accused Shashi Bhushan Paswan



against the prosecution side with the allegation that the informant of this case assaulted him with slaps and also asked him as to why he did not cast his vote in their favour.

7. There is allegation of firing, but no one has suffered any kind of injury. The occurrence does not appear to have taken place due to malicious feeling of caste, as such, the provision of SC/ST Act is not attracted.

8. In my view, there is no material at all for taking cognizance. Accordingly, the order dated 02.11.2018 passed by Additional District and Sessions Judge-cum-Special Judge SC/ST Act in Special Case No. 440 of 2017, arising out of Agam Kuan P.S. Case No. 263 of 2017, is hereby quashed and the appeal is allowed.

(Nawneet Kumar Pandey, J)

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