

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.208 of 2020

Arising Out of PS. Case No.-86 Year-2013 Thana- SC/ST District- Begusarai

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1. SUBODH SINGH Son of Charitar Singh Resident of Village - Ekamba, P.S.- Khodawanpur, Distt.- Begusarai.
 2. Mintu Singh @ Niraj Singh Son of Charitar Singh Resident of Village - Ekamba, P.S.- Khodawanpur, Distt.- Begusarai.
 3. Sintu Singh Son of Charitar Singh Resident of Village - Ekamba, P.S.- Khodawanpur, Distt.- Begusarai.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Kari Devi W/o Late Ashok Ram Resident of Village - Ekamba, Shekhar Tola P.S.- Khodawanpur, Distt.- Begusarai.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ravindra Kumar
For the Respondent/s : Mr.Binay Krishna

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 27-01-2025 Heard the parties including learned counsel for the informant.

2. This appeal has been preferred on behalf of the appellants for setting aside the order dated 5.12.2019 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Begusarai in connection with Begusarai SC/ST P.S. Case No. 86 of 2013 by which the learned Special Judge has dismissed the discharge petition of the appellants.

3. The prosecution story in brief is that one Kari Devi, Informant lodged a written report before the Officer-In-



Charge of Begusarai SC/ST Police Station stating that on 28.05.2013 at about 4 O' Clock in the evening, her co-villager Subodh Singh, Mintu Singh @ Niraj Singh, Sintu Singh and Charitar Singh asked her for working as a labor. She told them that there is marriage in Gotiya and after marriage she will come on work. After some time while she was cutting grass in the field, all the FIR named accused persons came there and surrounded her and disrobed her and when she objected the same, Subodh Singh started abusing her in the name of caste and have assaulted her. The father of Subodh Singh told that he will kill her and started pressing her neck and on shout, Deepak Ram, Punam Devi, Bhola Rai etc., arrived and on their intervention her life was saved.

4. On the basis of aforesaid written report before the Officer-In-Charge of Begusarai SC/ST Police Station, Begusarai SC/ST P.S. Case No. 86 of 2013 was registered against the appellants.

5. It has been submitted by the learned counsel for the appellants that before entering into the merits of the case it is important to mention here that the informant for the same occurrence had earlier lodged a case having Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013 for the alleged



offences under section 341/323/504/34 of the Indian Penal Code and in the said case, the police, after investigation submitted charge-sheet against Subodh (Appellant No.1) and Sintu Singh (Appellant No.3) registered under section 341/323/504/34 of the Indian Penal Code and thereafter accusation was explained under section 341/323/504/34 of the Indian Penal Code. He further submits that summon was issued to the prosecution witnesses thereafter bailable warrant was issued and lastly Dasti summon was issued to the prosecution for the examination of witnesses and after exhausting the process to ensure the attendance of the witnesses none turned on behalf of the prosecution to support their case and the Appellant No. 1 & 3 were accordingly acquitted on the ground of no evidence.

6. Learned counsel for the appellants further submit that from perusal of the First Information Report of Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013 and Begusarai SC/ST P.S. Case No. 86 of 2013, the time of occurrence, as well as the informant and accused persons except Mintu Singh @ Niraj Singh (Appellant No. 2) and Charitar Singh are the same and the police in mechanical manner illegally submitted charge-sheet in the present case against all the accused persons.



7. It has further been submitted that the learned Magistrate took cognizance of the offence against the appellants in mechanical manner as from perusal of the case diary, it appears that the police has submitted charge-sheet in this case on 31.08.2016 for the offence under section 341/323/354/34 of the Indian Penal Code and section 3(1)(10) SC/ST Act and the police has mentioned in Para-18 of the case diary which is supervision note of the Sub Divisional Police Officer, Manjhaul that the informant had earlier filed Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013 dated 29.05.2013 for the same occurrence in which charge-sheet was submitted and the Investigating Officer was directed to file a petition in Khodawanpur (Chhaurahi O.P.) P.S Case No. 98 of 2013 for amalgamation in the instant case.

8. It has further been submitted by the learned counsel for the appellants that the learned Magistrate, in mechanical manner without looking into the Paragraph No. 18 of the case diary, took cognizance of the offences on the basis of charge-sheet submitted by the police and even the learned A.P.P neither pointed out nor mentioned before the Magistrate at the time of taking cognizance that another case vide Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013 dated 29.05.2013 has



been filed by the informant for the same occurrence, although there is mention in the case diary for amalgamating the instant case with Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013.

9. It has further been submitted by the learned counsel for the appellants that the appellants have filed a petition under section 239 of the Code of Criminal Procedure for discharge and it was brought to the notice of the Trial Court that informant has lodged Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013 against Subodh Singh (Appellant No. 1), Sintu Singh (Appellant No. 2) and their mother and the allegation are same in which charge-sheet was submitted after the investigation, the accused persons were acquitted.

10. In his concluding submission, learned counsel for the appellants have submitted that after filing of the discharge petition, the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Begusarai disposed of the application, discharging the accused persons but subsequently it transpires that the Special Judge, SC/ST (Prevention of Atrocities) Act, Begusarai has revoked the order dated 05.12.2019 and posted the case for framing of charge on 21.01.2020.

11. In support of his arguments, learned counsel for



the appellants have further relied upon a judgment of the Hon'ble Supreme Court passed in the case of ***T.T. Antony Vs. State of Kerala reported in 2001 6 SCC 181*** and has argued that once, for the same offence, the FIR was filed by the same informant against the appellants, second FIR could not have been registered or it should not continue.

12. Learned counsel for the informant and learned APP for the State have opposed the application of the appellants and have supported the impugned order.

13. I have considered the submission of the parties.

14. It is an admitted positing that for the same occurrence, Khodawanpur (Chhaurahi O.P.) P.S. Case No. 98 of 2013 has been registered in which the appellant has been acquitted in the trial and thereafter, the petitioner had filed an application for discharge in the present case but the Special Judge has failed to consider Section 300 of the Cr.P.C. which reads as under:-

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been



convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for; any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

15. In the opinion of this Court, when for the same offence, in the earlier trial, the appellants have been acquitted, they cannot be put on trial again and therefore, the appellant ought to have been discharged and I am afraid that the Special



Judge has not applied his mind in passing the present order and has mechanically dismissed the application of the appellants.

16. In view of the above discussion, this appeal is allowed and accordingly, the order dated 5.12.2019 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Begusarai in connection with Begusarai SC/ST P.S. Case No. 86 of 2013 by which the learned Special Judge has dismissed the discharge petition of the appellants, is hereby quashed and also the discharge petition dated 5.7.2019 is allowed and the appellants are hereby discharged.

(Sandeep Kumar, J)

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