

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.385 of 2020

Arising Out of PS. Case No.-1030 Year-2019 Thana- COMPLAINT CASE District- Jamui

1. SUMAN KUMAR @ SUMAN KUMAR SAW Son of Dinesh Saw Resident of Village-Chhathu Danama, Police Station-Jamui, District-Jamui.
2. Dhanraj Saw Son of Dinesh Saw Resident of Village-Chhathu Danama, Police Station-Jamui, District-Jamui.
3. Roushan Kumar @ Roushan Saw Son of Dinesh Saw Resident of Village-Chhathu Danama, Police Station-Jamui, District-Jamui.
4. Dinesh Saw Son of Late Ram Saw Resident of Village-Chhathu Danama, Police Station-Jamui, District-Jamui.

... .. Appellant/s

Versus

1. The State of Bihar
2. Ajay Kumar Son of Nand Kishore Paswan Resident of Village-Chhathu Danama, Police Station-Jamui, District-Jamui.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Anil Kumar
For the Respondent/s : Mr.Usha Kumari 1

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 23-01-2025 Heard learned counsel for the petitioner and learned
Special Public Prosecutor for the State.

2. The present appeal has been filed against the order dated 19.11.2019 passed by the 1st Additional District and Sessions Judge, Jamui in SC/ST Case No.198 of 2019 arising out of complaint case No. 1030C of 2019 whereby and whereunder the court below has taken cognizance for the offence under Sections 323, 341, 504 of the Indian Penal Code and Sections 3(1)(r) of the Schedule Caste/Schedule Tribes (Prevention of Atrocities) Act.



3. The present case has been instituted on the basis of complaint filed by the respondent no.2 against the appellants in short is as follows:-

i. It is alleged that on 12.7.2019, the appellants with deadly weapon came in front of the house of the respondent no. 2 at PCC Road and abused the respondent no.2 stating therein that in the court, the respondent no. 2 has filed the case under sections 420, 468, 471, 406, 323, 504, 506, 120B of the Indian Penal Code.

ii. It is alleged that the accused-appellant No. 2 had snatched a golden ring from the finger of Respondent No. 2, worth Rs. 8000/-. It is further alleged that the accused persons are criminals who had threatened to kill the complainant if the criminal cases instituted against him are not withdrawn. It is submitted that the cause of occurrence is that the accused persons has cheated three lakhs from the respondent and in connection thereof in the court of learned Chief Judicial Magistrate, Jamui Case No.948C of 2019 is going on.

4. The learned counsel for the appellants submits that on 21.6.2019, the appellant no.2 had filed an informatory petition bearing information no.1463 before the Sub- Divisional Magistrate, Jamui stating therein that Nand Kishor Paswan,



father of the respondent and Sarvan Kumar had taken Rs. 1.5 Lakhs each respectively as friendly loan with assurance to return. After some time, they demanded account number with assurance to deposit on installment basis in the account of the appellant no.2. It is submitted that they had deposited some amount however Rs.60,000/- are due and pending against each person. Even after several demands, they did not return the same. Further, on demand they abused and clearly stated that they will not return the same. It is submitted that they also threatened that if the appellants will demand the said amount, then they would be implicated them in a case under the SC/ST Act.

5. The respondent no.2 has also filed a false case in order to implicate the appellant bearing complaint case no.1489 of 2019 and the present false case has also been filed on 22.7.2019 with the false and concocted allegation.

6. The learned counsel submits that there is no injury report on the record the allegation of assault is also a false and concocted against the appellants. So far Section 3(1)(r) SC/ST Act is concerned, the same is not made out against the appellant under facts and circumstances of the case. It is further submitted that the alleged place of occurrence is not within public view.



Section 323, 341 and 504 of Indian Penal Code are also not attracted in the present case.

7. Learned counsel for the informant / complaint has opposed the application and has submitted that the occurrence is true and is supported by the independent witnesses and the cognizance has rightly been taken in the present case.

8. Learned Special Public Prosecutor has also supported the order taking cognizance and has submitted that the cognizance has rightly been taken against the accused persons.

9. I have considered the submissions of the parties.

10. It is an admitted fact that there is a pending dispute between the parties. In addition to the case filed under Section 420, the present complaint has been filed to pressurize the petitioner.

11. From the complaint, it will appear that the complainant has not approached the S.C./S.T. police station which is available in every district of the State for registration of cases for atrocities committed on the members of the S.C./S.T.

12. In the complaint nothing has been mentioned as to why the complainant did not approach the police.

13. Moreover, the impugned order taking cognizance



is a cryptic order which has not discussed the materials on which the cognizance has been taken by the Additional Judge.

14. I am of the view that while taking cognizance the Magistrate ought to have considered the materials passed speaking orders and should not have acted mechanically.

15. In view of the above and the law laid down by the Hon'ble Supreme Court in the case of *Pepsi Foods Ltd. v. Special Judicial Magistrate reported in (1998) 5 SCC 749*, I am of the view that the impugned order dated 19.11.2019 by which cognizance has been taken is an illegal order and the same cannot be sustained.

16. In these circumstances, this application is allowed.

17. The order dated 19.11.2019 passed by the 1st Additional District and Sessions Judge, Jamui in SC/ST Case No.198 of 2019 is hereby quashed.

(Sandeep Kumar, J)

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