

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.835 of 2019

Arising Out of PS. Case No.-6 Year-2018 Thana- SC/ST District- Kishanganj

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Anuj Kumar Sinha @ Chintu Kumar Son of Jyotindra Nath Sinha, Resident of Village -Kasera Patti Road, Ward No 6, Kishanganj Bazar, P.S.- Kishanganj, Distt.- Kishanganj

... .. Appellant/s

Versus

1. The State of Bihar
2. Shivaji Kumar Basak Son of Late Anant Prasad Basak Resident Of Village -Kasera Patti Road No.6, P.S.- Kishanganj, Distt.- Kishanganj

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Raj Kumar, Advocate Mr. Sarvottam Kumar, Advocate Mr. Pratik Kumar, Advocate Mr. Vijay Kumar, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, Spl.PP
For the informant	:	Mr. Ranjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 25-02-2025

1. Heard the learned counsel for the appellant, learned Special PP for the State and the learned counsel for the informant.

2. This appeal is directed against the order dated 30.08.2018 passed by the Special Judge, Kishanganj in Kishanganj SC/ST P.S. Case No. 06 of 2018 by which the Court below has taken cognizance against the appellant for the offences punishable under Sections 341, 323, 504, 325 of the IPC and under Sections 3(i)(r) of the SC/ST (POA) Act.

3. As per the case of the prosecution, one *Shivaji Kumar* gave a written report before the S.H.O. of SC/ST Police Station,



Kishanganj on 09.05.2018 alleging therein that on 08.05.2018 at about 11:00 O' Clock when the informant was going to his house and when he reached near the street of his house then Chintu Sinha was in front of his vehicle and when the informant asked him to move away then Chintu Sinha abused him by taking his caste name and when the informant protested then Chintu Sinha assaulted him and pushed him on the ground due to which the informant got injured and thereafter, Chintu Sinha pressed his throat with intension to kill him. Chintu Sinha also spited in the mouth of informant.

4. On the basis of aforesaid written application, police registered a case bearing Kishanganj SC/ST P.S. Case No. 06 of 2018 for the offence punishable U/s 341,323,504 of the I.P.C. and U/s 3(i)(r) of the SC/ST (POA) Act, 1989. After investigation police submitted Charge-Sheet No. 08 of 2018 dated 04.08.2018 U/s-341,323,504,325 of the I.P.C. and 3(i)(r) of the SC/ST (POA) Act, 1989 against the appellant, thereafter, the Court below took cognizance against the appellant.

5. It has been submitted by the learned counsel for the appellant that the appellant has committed no offence and he has falsely been implicated in the present case due to malicious motive and dirty village politics. He further submits that the appellant and



the respondent no. 02 are resident of same village and for petty matter, the present case has been lodged by the informant against the appellant.

6. It has further been submitted by the learned counsel for the appellant that on the alleged date and time of occurrence when the informant was going to his house by motorcycle then in the way respondent no. 2 dashed the appellant and then the appellant said to the respondent no.2 to ride bike carefully but he started quarreling with the appellant and some altercation took place between them then respondent no.2 said that he will implicate the appellant in false case. Thereafter, the respondent no.2 lodged the present false case against the appellant. He further submits that the present case has been lodged by the respondent no.2 against the appellant merely with view to harass him and to extort illegal money from the appellant in the name of compromise in the case and to extort money from the government fund.

7. It has further been submitted by the learned counsel for the appellant that it appears from perusal of injury report dated 08.05.2018 of the respondent no.2 that the informant has received three injuries. Injury no.1 is abrasion on right elbow, injury no.2 is bruise on left of elbow and injury no.3 is swelling on right cheek



(2 x 5 cm). It also appears from the injury report that injury no.1 and 2 are simple caused by hard and blunt object and injury no.3 for opinion was kept reserved. He further submits that from the perusal of injury report of respondent no.2 dated 30.07.2018 the victim was examined by the doctor on 05.07.2018 about after 57 days from the date of advice and occurrence and opinion of doctor about injury No.3 is grievous in nature, which itself shows that the said injury report was manipulated. He further submits that the appellant has denied the allegation levelled against him and he has no connection with the alleged occurrence.

8. It is next submitted by the learned counsel for the appellant that the appellant neither abused the respondent no. 02 by taking his caste name nor assaulted him as has been alleged in the FIR against appellant rather allegations levelled in the FIR against the appellant are false, fabricated and concocted merely with view to harass and to extort money from the appellant. He further submits that the present case filed by the respondent no. 02 against the appellant is a malicious prosecution and he is taking benefit of being SC/ST caste rather no such type of occurrence has ever taken place as alleged in the FIR. He further submits that except the mala fide intension of respondent No.2, conspiracy of village enemy of the appellant, no other evidence came against the



appellant and from the perusal of aforesaid facts, no case U/s 341,323,504,325 of the I.P.C. and 3 (i)(r) of SC/ST (POA) Act, 1989 is made out against the appellant. The Court below took cognizance U/s 341,323,504,325 of the I.P.C. and 3 (i)(r) of SC/ST (POA) Act, 1989 against the appellant and has acted without any cogent material in most arbitrary manner. The Court below did not consider all these materials which are available on the record and the impugned order has been passed without application of mind in a mechanical manner.

9. The learned counsel for the appellant has relied upon the various judgments of the Hon'ble Supreme Court in the case of ***Gorige Pentaiah vs State of A.P. & Ors.***, reported in (2008) 12 SCC 531, ***Hitesh Verma vs State of Uttarakhand & Anr.***, reported in (2020) 10 SCC 710. He has further relied upon a case of this Court passed in the case of ***Suresh Kumar Pandey Vs State of Bihar & Anr*** in ***Cr. Appeal (SJ) No. 5034 of 2019***.

10. Learned Special PP for the State as well as the learned counsel for the respondent no. 02 have opposed the appeal of the appellant.

11. Learned counsel for the respondent no. 02 has filed a counter affidavit and has supported the prosecution case. He has submitted that the informant belongs to Scheduled Castes and



offences as alleged in the FIR are made out against the appellant under the SC/ST Act.

12. Learned Spl.PP for the State as well as the learned counsel for the informant have also supported the impugned order and have submitted that the order taking cognizance is a reasoned order and the same should not be interfered with.

13. Learned counsel for the informant has also relied upon a case of Hon'ble Supreme Court in the case of *State of M.P. vs Chunnilal @ Chunni Singh* reported in (2009) 12 SCC 649.

14. I have considered the submissions of the parties and have also gone through the materials available on record.

15. The written complaint by the informant against the appellant reads as follows:-

"सेवा में

श्रीमान् थाना अध्यक्ष महोदय

अनुसूचित जाति/जनजाति थाना

किशनगंज

महाशय

निवेदन पुर्वक कहना है कि शिवाजी कुमार बसाक पिता स्व०

अनन्त प्रसाद बसाक उम्र 50 वर्ष साकिन कसेरपटी रोड वार्ड नं.6 पोस्ट+ थाना

जिला किशनगंज का निवासी हूँ। एवं चौपाल जाति का सदस्य हूँ जो अनुसूचित



जाति में आता है मैं दिनांक 8.5.18 को लगभग 11 बजे दिन में अपनी घर जा रहा था कि घर के गली के पास जब पहुंचा तो चिन्टु सिन्हा पिता स्व० ज्योतिन्द्र नाथ सिन्हा उम्र लगभग 22 वर्ष साकिन कसेर पटी रोड वार्ड नं.6 पो0+थाना+जिला किशनगंज गाड़ी के सामने था जिसे मैंने गाड़ी के सामने से हटने को कहा तो इस पर वह शाला हरिजन का बच्चा कहकर गाड़ी नहीं ले जाने देगे कहा। मैंने विरोध किया तो मुझे मोटर साइकिल से खींच कर हाथ पांव से बुरी तरह से मारपीट किया और मुझे धक्कादेकर जमीन पर पटक दिया जिससे मैं जख्मी हो गया। मेरे शरीर पर चढ़कर जान से मारने की नियत से गर्दन दबाने लगा। पुरे मुँह में हरिजन कहते हुए थुक फेक दिया। गवाहों के पहुंचने पर मेरी जान बच गई।

अतः श्रीमान से प्रार्थना है कि उपरोक्त व्यक्ति पर कानूनी कारवाई करने की कृपा की जाय।

दिनांक 9.5.18

विश्वासभाजन

Shivajee Kr. Basak

Registered Kishanganj SC/ST P.S. Case No.06/18
dt.9.5.18 U/s 341/323/504 IPC & 3(1)(r)(s)(u)SC/ST (POA) Act S.I.
Birbal Ram PSI investigate this case.

राजकुमार

9.5.18

SC/ST थाना किशनगंज"

16. The Hon'ble Supreme Court has repeatedly been holding that the mala-fide prosecutions should be quashed at the very initial stage when the prosecution amounts to abuse of the process of the court. In the present case from the reading of



complaint/FIR, it appears that primarily the dispute occurred on a road and the parties have fought on the road and thereafter the case has been given a colour of a prosecution under the SC/ST Act.

17. The Hon'ble Supreme Court in the case of ***Gorige Pentaiah vs State of A.P. & Ors (supra)*** has held that frivolous complaints should be quashed.

18. In the present case, after going through the impugned order it appears that the impugned order is a non-speaking and a cryptic order in which the materials have not been discussed by the Special Judge.

19. From reading of the complaint, it appears that the present complaint has been filed by the informant merely with a view to harass the appellant. The offence has not been committed with an intention that the victim belongs to the Scheduled Caste category. It is settled law that when the basic ingredients of the offences are missing then permitting such a complaint to continue and compel the appellant to face the criminal trial would be totally unjustified and will lead to blatant abuse of the process of the law. The actions alleged in the complaint fail to bring out intent to humiliate a member of the Scheduled Caste or Scheduled Tribe by a member of non-scheduled caste in public purview. Unless statement to the aforesaid extent is there, the whole prosecution



would fail in view of the law laid down by the Hon’ble Supreme Court in the case of **Gorige Pentaiah** (*supra*).

20. This kind of mala fide prosecution should not be allowed to continue in view of the law laid down by the Hon’ble Supreme Court in the case of State of **Haryana & Ors vs Bhajan Lal & Ors** reported in **1992 Supp (1) SCC 335**.

21. In view of the discussions made above, the appeal stands allowed. Accordingly the impugned order dated 30.08.2018 passed by the Special Judge, Kishanganj in Kishanganj SC/ST P.S. Case No. 06 of 2018 is hereby set aside.

22. The appeal stands allowed.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
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