

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.200 of 2024

Arising Out of PS. Case No.-169 Year-2018 Thana- FATEHPUR District- Gaya

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1. Mahesh Tiwari S/o Ram Ratan Tiwari R/o Village - Repura, P.S. - Sitamarahi, District - Nawadah
 2. Sujit Kumar S/o Manoj Tiwari R/o Vil - Pahadpur, P.S. - Fatehpur, Dist. - Gaya, Bihar - 824232

... .. Petitioner/s

Versus

1. The State of Bihar through The Secretary, Home Department, Government of Bihar Patna
2. The Senior Superintendent of police, Gaya
3. The Station House Officer, Fatehpur, Gaya
4. Babloo Paswan son of Sudama Paswan Village- Pahadpur Ps- Fatehpur Dist- Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. M. Kumar, Advocate Mr. Aditya Raman, Advocate Mr. Akash Kumar, Advocate
For the Respondent/s	:	Mr. Sadanand Paswan, Advocate
For the O.P. No.4	:	Mr. Ajay Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

11 17-02-2025 This is a criminal revision application filed by the petitioners for quashing and setting aside order dated 10.06.2020 passed by learned Special Judge SC/ST Court, Gaya in Fatehpur P.S. Case No.169 of 2018 whereby and whereunder, the learned Special Judge took cognizance of offence against the petitioners and others under Sections 147, 148, 149, 341, 323, 354 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of



Atrocities) Act, 1989 as well as the order of issuance of process passed by the Trial Court dated 30.11.2023.

2. It is the case of the petitioners that the petitioner No.1 lodged a complaint in Fatehpur police station, sometimes in the year 2017 alleging, inter-alia, that one Ranju Devi, three F.I.R. named accused persons alongwith some unknown accused committed murder of the son of the petitioner No.1. Amongst the accused persons, the cousin of the informant was a named accused. Police submitted charge sheet in the said case on 20.01.2018 in which two cousins of petitioner No.2 were cited as witnesses.

3. Subsequently, it is alleged by the opposite party No.4, namely, Bablu Paswan that the petitioner No.2 being a charge-sheeted witness of Fatehpur P.S. Case No.379 of 2017 used to threaten the informant and his family members frequently of committing offence under the I.P.C. and also under the SC and ST (Prevention of Atrocities) Act, 1989. Finding no other alternative, the opposite party No.4 submitted a written information with Fatehpur police station against the accused persons/petitioners which was registered as Fatehpur P.S. Case No.40/2018 under Section 341, 323, 385, 504, 506/34 of the Indian Penal Code on 15.02.2018. It is also alleged that the



petitioners criminally intimidated the defacto complainant and his family members by taking the name of their caste within public view. On the contrary, the petitioner No.1 submitted two representations on 21.04.2018 and 04.06.2018 stating, inter-alia, that he was being threatened by the accused persons of Fatehpur P.S. Case No.379 of 2017. Subsequently, on 14.05.2018, the respondent No.4 filed a complaint before the learned Special Judge under SC/ST Act against the present petitioners making allegations that on 08.02.2018 and 01.03.2018, the present petitioners alongwith five other accused found in an unlawful assembly with deadly weapons committed rioting, wrongful restrained caused hurt and outrage modesty of the female members of the family of the complainant and also criminally intimidated them taking name of the caste in public view, thereby committed offence under Sections 147, 148, 149, 341, 323, 354 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The learned Special Judge passed an order under Section 156(3) of the Cr.P.C. and sent the said complaint to Fatehpur Police Station with a direction to the S.H.O. of the said police station to treat the said complaint as F.I.R. and registered



specific case against the accused persons. Accordingly, police registered Fatehpur P.S. Case No.169 of 2018 against the present two petitioners and five other accused persons and took up the case for investigation. On completion of investigation, police submitted final form on the ground that the allegation made out against the petitioners had not been substantiated and the F.I.R. was an outcome or counter blast to Fatehpur P.S. Case No.379 of 2017.

5. However, by an order dated 10.06.2020, the learned Special Judge took cognizance of offence upon the said complaint under Sections 147, 148, 149, 341, 323, 354 of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 on the basis of the materials contained in paragraphs No.5 to 8 of the case diary. After taking cognizance of offence on 10.06.2020 the learned Special Judge issued summons against the accused persons including the petitioners on 30.11.2023.

6. It is submitted by the learned Advocate for the petitioners that the entire process adopted by the learned Special Judge in connection with Fatehpur P.S. Case No.169 of 2018 suffers from ex-facie illegality and material irregularity. In support of his contention he refers to the decision of the Hon'ble



Supreme Court in the case of *Priyanka Srivastava Vs. State of U.P.*, reported in (2015) 6 SCC 287 and *Babu Venkatesh and others Vs. The State of Karnataka*, reported in (2022) 5 SCC 639. It is submitted by the learned Advocate for the petitioners relying on the above-mentioned decisions that it is the duty of the learned Magistrate or the Special Judge to consider as to whether the informant attempted to file a complaint initially under Section 154 of the Cr.P.C. and on refusal by the police authority to accept such F.I.R., whether it was sent to the higher officers of the police department for taking necessary action and again the higher officers of the police department did not take action for the redressal of the complainant. Not only this, the statement of the complainant in this regard must be supported by an affidavit. What was narrated as guideline in *Priyanka Srivastava* (supra) is directed to be a statutory requirement in *Babu Venkatesh* (supra). The informant/opposite party no.4 is not aware of any such statement in the petition of complaint. Therefore, the learned Special Judge committed a gross illegality in sending the complaint under Section 156(3) of the Cr.P.C.

7. Secondly, it is alleged by the learned Advocate for the petitioners that as per the complaint alleged incident took



place on 08.02.2018 and 01.03.2018. Complaint was made after the expiry of more than two months of the last alleged incident i.e. on 04.05.2018. The learned Special Judge failed to consider the complaint and was vitiated by inordinate delay and there is always chance of concoction in case of a delayed complaint, specially when a counter case under Section 302 of the I.P.C. is pending against the opposite party no.4 and others.

8. It is also submitted by the learned Advocate for the petitioners that the complaint dated 04.05.2018 discloses a story of receiving injuries by the complainant and his family members. However, there is no document filed before the learned Special Judge in the form of injury report to prima-facie prove the allegation against the petitioners and others.

9. With regard to the allegation of offence under Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is pointed out by the learned Advocate for the petitioners that the complaint discloses a story that the opposite party no.4 and his family members were allegedly abused by the word “Dusadh”.

10. Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is a penal provision for intentional insult or intimidation with intent to



humiliate a member of a Scheduled Caste or a Schedule Tribes, in any place within a public view. Clause-(s) relates to abuse of any member of Scheduled Caste or a Scheduled Tribe by caste name in any place within a public view.

11. The crux of the offence is that criminal insult, intimidation or abuse must be made within the public view.

12. Paragraph No.3 of the complaint relates to an incident of 08.02.2018 and para-7 speaks about an incident on 01.03.2018. The place of occurrence as stated in the complaint was “अभियोगी के घर के अन्दर एवं बाहर ग्राम पहारपुर थाना फतेहपुर जिला गया” so even assuming that the petitioner was insulted, intimidated and abused in the name of his caste. It was allegedly committed by the accused persons inside the house of the complainant and the same cannot be stated to be within public view. In support of his contention, the learned Advocate on behalf of the petitioner refers to the decision of Hon’ble Supreme Court in the case of ***Rabindra Kumar Chhatoi Vs. The State of Odisha & Anr. (Special Leave Petition (Crl.) No.1608/2020***), decided on 05.12.2024. Paragraph No.13 of the Rabindra Kumar Chhatoi is relevant for our purpose and quoted below:-

“13. On a reading of the same, it is evident that the intention to insult or intimidate with an intent to



humiliate a member of the Scheduled Castes and the Scheduled Tribe must be "in any place within public view." There is no doubt that the second respondent herein, is a member of the Scheduled Caste. The question is, whether, the alleged utterances by the appellant herein, was in any place within public view. It is noted that when the second respondent sought to repair her house which is adjacent to the appellant's house along with her employees (Labourers) and went into the appellant's house without seeking his prior permission, it was objected to by the appellant herein. The place of occurrence of the alleged offence was at the backyard of the appellant's house. Backyard of a private house cannot be within the public view. The persons who accompanied the second respondent were also the employees or the labour force she had engaged for the purpose of carrying out repairs to her house which is adjacent to the appellant's house. They cannot also be termed as public in general."

13. Similar view was taken by this Court in ***Deo Shanker Vajpayee @ Deo Shankar Bajpayee & Ors. Vs. The State of Bihar & Ors.*** placing reliance on the decision of the Hon'ble Supreme Court in ***Ramesh Chandra Vaishya Vs. State of U.P. & Anr.*** reported in ***(2023) 6 SCR 643***. The Bombay High Court Bench at Aurangabad also took the same decision in Criminal Application No.4113 of 2022, ***Afshamaskar Laikhkan Pathan Vs. The State of Maharashtra & Anr.***, decided on



14.01.2025.

14. The learned Advocate on behalf of the opposite party No.4, on the other hand, submits that existence of counter case reveals that there was enmity between the parties. Enmity is a double edged weapon that cuts both ways. Therefore, it would be an error at the cost of the complainant to quash the criminal case at this initial stage.

15. Having heard the learned Advocates for the parties and on careful perusal of the entire materials on record, this Court finds that the learned Special Judge took cognizance of offence on the basis of the materials in case diary of Fatehpur P.S. Case No.169 of 2018. Police submitted a final report in Fatehpur P.S. Case No.169 of 2018, when a final report is submitted by the police upon an application under Section 156(3) of the Cr.P.C., the question of non-adherence of the guidelines of the Hon'ble Supreme Court in Priyanka Srivastava (supra) or Babu Venkatesh (supra) does not arise. The guideline stipulated in both the reported decisions is in the nature of check list to be examined by the Magistrate/ Special Judge before sending an application under Section 156(3) of the Cr.P.C. with a direction to treat the same as an F.I.R. If the F.I.R. is lodged and investigation commences, failure on the part of the learned



Magistrate to check and examine if the guideline of the Supreme Court has been followed will lose its importance. Therefore, the decision in Priyanka Srivastava or Babu Venkatesh is not applicable in case of taking cognizance of offence by the learned Special Judge on the basis of the materials in case diary.

16. Next comes the question as to whether delay in lodging complaint can be a ground to quash the initial order of taking cognizance. In the considered view of the Court, delay in lodging complaint does not *ipso facto* convert a complaint into a nullity. Delay creates a suspicious circumstance with regard to concoction of a case by the prosecution whether a prosecution case is concocted or not can only be decided on the basis of evidence on record that may be adduced by the parties and not at the stage of taking cognizance. Therefore, on this two counts, this Court is not in conformity with the learned Advocate for the petitioners.

17. At the same time however, it is prima-facie found and established from the petition of complaint that no incident of criminal insult or intimidation or abuse in the name of caste of opposite party no.4 was attributed against these petitioners in public view. Therefore, there was no ground for the learned Special Judge to take cognizance of offence under Section 3(1)



(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Therefore, the order of cognizance under Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is quashed.

18. As the order of cognizance under Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 taken by the learned Special Judge is quashed, the learned Judge is directed to sent down the record to the Court of the learned Chief Judicial Magistrate, Gaya to try the case for the offences under the Indian Penal Code.

19. The learned Chief Judicial Magistrate, Gaya personally can take-up the matter for hearing or may transferred the case to any competent Judicial Magistrate, 1st Class for hearing.

20. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

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