

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.422 of 2016

Arising Out of PS. Case No.-48 Year-2006 Thana- KOTWA District- East Champaran

1. Rameshwar Bhagat @ Rameshar Bhagat, son of late Husseni Bhagat,
2. Gobind Bhagat @ Gobinda, son of Rameshwar Bhagat,
Both residents of village- Machharganwa, P.S. Kotawa, District East-Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Bikas Kumar Sharma, Advocate. Mr. Jitendra Kumar, Advocate. Ms. Madhuri Kumari, Advocate.
For the State	:	Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 15-07-2025

Introduction

The present Appeal has been preferred by the appellants against the impugned judgment and sentence dated 19.05.2016 and 20.05.2016 respectively, passed by learned Additional Sessions Judge-I-cum-Special Judge, SC and ST Act in SC/ST Case No. 63 of 2008, whereby the appellant/Gobind @ Gobinda Bhagat has been found guilty under Section 406 read with Section 34 of the Indian Penal Code and the appellant Rameshwar Bhagat @ Rameshar Bhagat has been found guilty for the offences under Sections 406 and 504 of the Indian Penal Code and Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and convict Gobind @



Gobinda Bhagat has been sentenced to simple imprisonment for one year and fine of Rs.3,000/- and in case of default to pay the fine, he is directed to undergo additional imprisonment for three months. Convict Rameshwar Bhagat @ Rameshar Bhagat has been sentenced to simple imprisonment for one and half years and fine of Rs.5,000/- under Section 406 of the Indian Penal Code and in case of default to pay the fine, he has been directed to undergo additional simple imprisonment for three months. He has been further sentenced to simple imprisonment for three months under Section 504 of the Indian Penal Code and fine of Rs.500/- and in case of default to pay the fine, he has been directed to undergo additional simple imprisonment for one and half months. He has been further sentenced to imprisonment for one year and fine of Rs.5,000/- under Section 3(1)(X) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and in case of default to pay the fine, he has been directed to undergo additional simple imprisonment for three months. The sentences of Rameshwar Bhagat @ Rameshar Bhagat has been directed to run concurrently.

Prosecution Case

2. As per the Criminal Complaint, accused Rameshwar Bhagat @ Rameshar Bhagat is old acquaintance of



the complainant/informant and he had negotiated with him for purchase of one parcel of land situated in village Machharganwan, Thana No. 181 bearing Khata No. 296, Khesra No. 1903 measuring 0.1 Kattha for consideration money of Rs.30,000/-. It is further alleged that in presence of witnesses, he also paid the consideration amount on 6.11.2005 to accused No. 1 and it was promised that accused Nos. 1 and 2 would execute registered sale deed. Thereafter, despite several requests, he did not execute the sale deed and finally on 19.11.2005 he clearly refused to execute sale deed and scolded and abused him saying that "साला हरिजन होकर मेरा ज़मीन लिखवायेगा तुम्हारा क्या औकात है "(Bloody *Harijan* will get sale deed executed by him and what capacity he has). It resulted into altercation. The accused further hurled dirty abuses and bent upon to beat him but on account of interference by the witnesses, he could be saved, but he refused to return the money. It is further stated that the Complainant is a member of Scheduled Castes and both the accused had harassed him, and asked him to flee away, otherwise they would urinate in his mouth. Hence, he has been humiliated. It is further alleged that when he went to Police Station, the Police Inspector being busy in the election advised him to go to the Court. It is further



alleged that the accused persons have played fraud with him and betrayed his trust.

Factual Background of the case

3. The factual background of the case is that one Criminal Complaint bearing No. 2293 of 2005 was filed by the Complainant Manoj Kumar Ram against the appellants Rameshwar Bhagat @ Rameshar Bhagat and Gobind Bhagat @ Gobinda in the Court of learned Chief Judicial Magistrate, Sadar Motihari, East Champaran, on 22nd November, 2005. On such complaint, learned Chief Judicial Magistrate directed the Police under Section 156(3) Cr.PC to lodge First Information Report for investigation. Hence, Kotawa P.S. Case No. 48 of 2006 was filed against Rameshwar Bhagat @ Rameshar Bhagat and Gobind Bhagat @ Gobinda for the offences punishable under Sections 420, 406, 323, 504 of the Indian Penal Code and Sections 34 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The investigation was entrusted to Assistant Sub Inspector, Mithlesh Prasad Singh.

4. After investigation, charge sheet bearing No. 110 of 2006 was submitted by the Police on 29.09.2006 for the offences punishable under Sections 406, 323, 504 read with Section 34 of the Indian Penal Code and Sections 3(1)(X) of



Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and hence the trial commenced. Subsequently, cognizance of offence was taken. Charge was also framed against both the Appellants under Sections 406, 423 and 504 of the Indian Penal Code and Section 3(i)(X) of SC & ST Act.

5. During the trial, altogether six witnesses were examined who were as follows:- (i) **P.W.1**- Prabhawati Devi, (ii) **P.W.2**- Subhash Ram, (iii) **P.W.3**- Ashok Kumar, (iv) **P.W.4**- Madan Mishra, (v) **P.W.5**- Manoj Kumar and (vi) **P.W.6**- Mithlesh Prasad Singh (ASI).

6. The Prosecution has also exhibited the following documents during the trial: (i) **Ext.-1**- Signature of Informant on Complaint, (ii) **Ext.-2**- Signature of the Officer-in-Charge, Sanjeev Kumar on the FIR, (iii) **Ext. - 3** – Signature of Sanjeev Kumar on the FIR.

7. After recording of the prosecution evidence, the accused were examined under Section 313 Cr.PC in which they claimed to be innocent and they also examined two witnesses in their defence, namely, **DW-1** Mahadev Prasad Dwivedi and **DW-2** Sachindra Bhagat and exhibited following documents:- (i) **Ext.-A** - sale deed, (ii) **Ext.-B** series from B1 to B3 - Sale deeds, and (iii) **Ext. - C** - Application dated 15.07.2009.



8. After the trial, the appellants were convicted and sentenced as mentioned above.

Submissions of the Parties

9. I heard learned counsel for the appellants and learned APP for the State.

10. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated in this case. They never took any money for selling any of their land to the Complainant/Informant and there is no question of abusing or committing any offence against the informant by the appellants. As a matter of fact, the accused Rameshwar Bhagat @ Rameshar Bhagat has purchased the land in question from Ashok Paswan and that land was wanted by the informant, but Ashok Paswan did not sell the land to the informant and he sold the same to the accused Rameshwar Bhagat @ Rameshar Bhagat. Hence, due to the grudge, the informant has lodged a false case misusing the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

11. He further submits that the impugned judgment of conviction is based on erroneous appreciation of law and facts. The prosecution has badly failed to prove its case against the appellants beyond reasonable doubts.



12. To substantiate his submission, he further submits that there is no cogent proof of any agreement between the appellant and the informant for sale of land and payment of consideration amount. No documentary proof has been brought on record in regard to alleged contract for sale. Moreover, there is also no documentary proof of payment of consideration amount of Rs.30,000/- to the appellants. The whole allegation is false and concocted on account of previous enmity. As a matter of fact, no occurrence has taken place.

13. He further submits that one of the basic ingredients of offence punishable under Section 3 of the SC and ST (POA) Act, 1989 is that the accused/appellants must be other than the SC/ST community. But there is no such allegation in the complaint, nor is any such evidence adduced by the prosecution during the course of trial. Hence, for want of such ingredient, no offence under Section 3 of SC and ST (POA) Act, 1989 is made out.

14. He also submits that even Sections 406 and 504 of the Indian Penal Code are not attracted in the facts and circumstances of the case. For offence under Section 406 of the Indian Penal Code, there must be entrustment as well as refusal to pay the amount on demand. But there is no such allegation or



evidence in the case on hand. As per the best case of the prosecution, the money was given for specific purpose for sale of land and in case of failure of the accused/appellants to execute the sale deed, the informant should have filed Civil Suit for specific performance. As such, no offence is made out under Section 406 IPC.

15. He further submits that even Section 504 of the Indian Penal Code is not attracted. Section 504 of I.P.C. provides for punishment for intentional insult to provoke the breach of peace. But there is no such case of prosecution.

16. He further submits that the complaint filed by the complainant/informant before the learned Chief Judicial Magistrate itself was defective. In case of cognizable offence, one is not permitted to approach the Magisterial Court without approaching the Police and as per the legal requirement if the Officer-in-Charge of any Police Station does not lodge the case, the informant is required to send a copy of the same to the Superintendent of Police before approaching the Magisterial Court, but admittedly, there is no such steps taken by the informant before filing the Complaint before the learned Magistrate. The complaint before Magistrate was also not supported by affidavit by the Complainant/informant. Hence,



the whole complaint and direction of learned Magistrate for lodging of First Information Report by the Police is illegal. As such, the whole prosecution case gets vitiated. Learned counsel refers to and relies upon the case of **Priyanka Srivastava and Anr. Vs. State of Uttar Pradesh and Ors**, [AIR 2015 SC 1758].

17. He further submits that the offence under SC and ST (POA) Act, 1989 is required to be investigated by an officer not below the rank of DSP as per Rule 7 of SC/ST Rules 1995, but in the case on hand, the investigation was conducted by the Assistant Sub Inspector of Police. Hence, the whole investigation gets vitiated and prosecution case fails on this ground alone. He refers to and relies upon **State of Madhya Pradesh Vs. Chunnilal @ Chunni Singh, 2009 (12) SCC 649**.

18. It is true that by Notification dated 3rd June, 2002, the State of Bihar has authorized all the officers of the rank of Police Inspector, Sub Inspector of Police and Assistant Sub Inspector of Police to investigate the cases under the SC/ST Act, but even this notification does not cure the defect in investigation of the case on hand, because that notification has become effective only from 9th August, 2008, whereas, in the case on hand, the case was registered in the year, 2006 and



charge-sheet was also submitted in the same year and as such, Assistant Sub Inspector was not competent to conduct the investigation of the case. Hence, the investigation in this case was vitiated.

19. However, learned APP for the State submits that in the impugned judgment and order of sentence, there is no illegality or infirmity in it and, hence, the same is not liable to be dismissed.

Findings and Order of this Court

20. I considered the submission advanced by both the parties and perused the material on record.

21. I find that Kotawa P.S. Case No. 48 of 2006, out of which the present Criminal Appeal arises, was registered under Section 156(3) Cr.PC. However, no affidavit was annexed along with the criminal complaint filed by the complainant.

22. I further find that the said Kotawa P.S. Case No. 48 of 2006 was registered for the offence punishable under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, besides Sections 420, 406, 323, 504 of the Indian Penal Code and this case was registered in the year, 2006 and even charge-sheet was submitted in the year, 2006 itself. But the case was investigated by Police Officer of the



rank of Sub-Inspector, who was not competent to investigate the case, in view of Section 9 of SC and ST Act and Rule 7 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995. Notification dated 3rd of June, 2002 authorizing all the officers of the rank of Police Inspector, Sub-Inspector and Assistant Sub-Inspector was made effective from 9th of August, 2008 by its publication in the Official Gazette.

23. Here, it would be pertinent to refer to **Smt. Ram Deni Devi & Anr. Vs. State of Bihar and Ors.** as reported in **2011 SCC OnLine Pat 499**, wherein Division Bench of this Court has held as follows:-

“17. For the aforesaid reasons, we declare that the impugned Notification dated 3rd June, 2002 is not ultra vires the Act of 1989 or the Rules made thereunder. It is further declared that the impugned Notification dated 3rd June, 2002 has become effective from the date of its publication in the Official Gazette of the State of Bihar i.e. on and from 9th August, 2008. Investigation and consequent prosecution lodged by a police officer empowered under the impugned Notification, though lower in the rank than a Deputy Superintendent of Police, on or after 9th August, 2008 will be valid although the offence in question may have been committed prior to 9th August, 2008. It is further declared that the investigation made by a police officer below the rank of a Deputy Superintendent of Police after the date of the Rules, i.e. 31st March, 1995 and prior to 9th August, 2008 and consequent prosecution will not stand validated by the impugned Notification dated 3rd June, 2002 published on 9th August, 2008.”

(Emphasis supplied)

24. Here, it would be also profitable to refer to **State of M.P. Vs. Chunnilal @ Chunni Singh** as reported in (2009)



12 SCC 649, where investigation done by incompetent Police Officer was held to be invalid. The relevant part of the judgment reads as follows:-

“8. The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation of an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non-investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in an appropriate court for the offences punishable under IPC notwithstanding investigation and the charge-sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence.”

(Emphasis supplied)

25. I further find that there is no allegation in the complaint that the appellants belong to community other than SC and ST, nor is any such evidence adduced on behalf of the prosecution. As such, I find that one of the essential ingredients of offence under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is missing and hence, offence under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not made out.

26. Here, it would be profitable to refer **Shashikant Sharma Vs. State of U.P., 2023 SCC OnLine SC 1599**,



wherein **Hon'ble Supreme Court** has observed as follows:

“14. From a bare perusal of the provision, it is crystal clear that for the above offence to be constituted, there must be an allegation that the accused not being a member of Scheduled Caste or Scheduled Tribe committed an offence under the IPC punishable for a term of 10 years or more against a member of the Scheduled Caste or Scheduled Tribe knowing that such person belongs to such ‘community’.”

(Emphasis supplied)

27. Here, it would be also profitable to refer to **Gorige Pentaiah Vs. State of A.P., (2008) 12 SCC 531**, wherein **Hon'ble Supreme Court** has observed as follows:

“6. In the instant case, the allegation of Respondent 3 in the entire complaint is that on 27-5-2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he (Respondent 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the appellant-accused was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate Respondent 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.”

(Emphasis supplied)

28. I further find that as per the evidence on record, even Section 406 of IPC is not made out. For offence under Section 406 IPC, entrustment of the alleged money for return on demand is *sine qua non*. However, there is no such case of the



prosecution. Only case of the prosecution is that he has paid Rs. 30,000/- to the appellants for execution of sale deed of a land belonging to the appellants. In such situation, even as per the best case of the prosecution, the alleged facts and circumstances constitute at most a dispute of civil nature and no offence is made out. The informant could have filed a Civil Suit for a specific performance, but the appellants should not have been prosecuted for offence under Section 406 IPC for want of such entrustment of the alleged money and allegation of any *mens rea* on the part of the appellants.

29. Offence under Section 504 IPC is also not made out. There is no allegation or evidence on record to show that appellants have intentionally insulted the informant to provoke breach of peace.

30. As such, I find that impugned judgment of conviction and order of sentence are not sustainable in the eye of law and the same is, accordingly, set aside allowing the present appeal. The appellants are acquitted of all the charges. They stand discharged from their bail bonds.

31. Pending Interlocutory applications, if any, stand disposed of.

32. LCR be sent back to the Court concerned



forthwith along with a copy of this judgment.

(Jitendra Kumar, J.)

S.Ali/Shoaib
Ravi Shankar

AFR/NAFR	A.F.R.
CAV DATE	04.02.2025
Uploading Date	15.07.2025
Transmission Date	15.07.2025

