

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4621 of 2023

Arising Out of PS. Case No.-107 Year-2023 Thana- SAHIYARA District- Sitamarhi

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1. BHIKHARI SHEKH S/O- LATE RAHMAN SHEKH Village- Dhumha Ps- Sahiyara Dist- Sitamarhi
 2. Gulab Shekh son of Bhikhari Shekh Village- Dhumha Ps- Sahiyara Dist- Sitamarhi

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Keshbar Paswan son of Birbal Paswan @ Girbal Paswan Village- Dhumha Ps- Sahiyara Dist- Sitamarhi

... .. Respondent/s

Appearance :

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

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 14-10-2025

Heard both sides.

2. The present appeal is directed against the order dated 24.08.2023 passed by the learned Ist Additional Sessions Judge -cum- Special Judge, SC/ST Act, Sitamarhi in connection with Sahiyara P.S. Case No. 107 of 2023, registered under Sections 341, 323, 324, 307, 337, 448, 427, 379, 504, 34 of the IPC and Section 3(i)(r)(s) of SC/ST (Prevention of Atrocities) Act whereby and whereunder cognizance for the offences punishable under Sections 341, 323, 337, 448, 427, 504/34 of the IPC and Section 3(i)(r)(s) of SC/ST (Prevention of Atrocities) Act has been taken against the appellants.



3. The prosecution story, in brief, is that respondent no. 2/ informant submitted his written statement before the SHO of Sahiyara Police Station, Sitamarhi stating therein that on 15.06.2023 at 7:00 PM, appellant no. 1, who was neighbor of informant, was repairing the house upon which case is going on and when the same was objected by the informant due to pending litigation, the appellants and other armed with lathi, danda and sword, started abusing the informant by calling his caste name. It is alleged that appellant no. 2 assaulted the informant upon his head by means of sword as a result of which blood started oozing out. Thereafter, other family members of the informant came and tried to pacify the dispute but all the accused persons started pelting stones upon the informant and his family members. It is alleged that they also damaged some articles of informant's house and appellant no. 1 took out Rs. 10,000/- from box. Thereafter, police arrived at the place of occurrence and informant was taken to the hospital.

4. On the basis of said written statement, Sahiyara P.S. Case No. 107 of 2023 has been registered for the offences punishable under Sections 341, 323, 324, 307, 337, 448, 427, 379, 504, 34 of the IPC and Section 3(i)(r)(s) of SC/ST (Prevention of Atrocities) Act.



5. Learned counsel for the appellants submits that in the background of land dispute, the false case has been instituted against the appellants. He further submits that there is case and counter case between the parties on the same date of occurrence and the case of appellants is prior to the case filed by the informant of the present case. In the light of the facts and circumstances of the case, no offence of SC/ST is made out against the appellants as Title Suit no. 33 of 2017 (Annexure 2) is also pending since 2017 before the Sub Judge – I, Sitamarhi. He further submits that the present case has been lodged by the informant just to misuse the privilege of SC/ST Act. He further submitted that investigation conducted by the police is faulty and charge sheet has been submitted under the provision of SC/ST Act just to implicate the appellants. Learned counsel for the appellants submits that investigating officer, after completion of investigation, submitted charge sheet under Sections 341, 323, 337, 448, 427, 504 and 34 of IPC and Section 3(i)(r)(s) of the SC/ST (POA) Act and without application of judicial mind, the learned trial court has taken cognizance against the appellants under the said sections. In the light of aforesaid fact, order passed by the concerned court is not justified and legal and same is fit to be set aside.



6. Learned Special Public Prosecutor for the State submits that appellants and informant are neighbor and appellants are well aware of the fact as to which caste informant and his family members belong to. He further submits that as per prosecution case, the appellants and other armed with lathi, danda and sword started abusing the informant by calling his caste name. He further submits that appellant no. 2 assaulted the informant upon his head by means of sword as a result of which blood started oozing out and appellant no. 1 took out Rs. 10,000/- from the box of informant's house. He further submits that the FIR clearly indicates that the occurrence had taken place at the disputed land where repairing of house was going on and other persons were also present at the place of occurrence which attracts the mandate of SC/ST Act. He further submits that there is allegation against the appellants and other that they abused the informant by calling his caste name and appellant no. 2 also assaulted the informant. He further submits that the accusation as alleged in the FIR clearly reflects that occurrence took place in public gaze and hence, contention of learned counsel for the appellants is neither tenable nor sustainable in the light of the accusation made in FIR. He further submits that FIR has been lodged under Sections Sections 341, 323, 324, 307, 337, 448,



427, 379, 504, 34 of the IPC and Section 3(i)(r)(s) of SC/ST (Prevention of Atrocities) Act. Learned counsels further submits that the investigating officer has conducted investigation on all points as alleged in the FIR and after completion of investigation submitted charge sheet under Sections 341, 323, 337, 448, 427, 504 and 34 of IPC and Section 3(i)(r)(s) of the SC/ST (POA) Act. He further submits that the learned trial court has found that sufficient material is available against the appellants and concerned court took cognizance against the appellants under Sections 341, 323, 337, 448, 427, 504/34 of IPC and Section 3(1)(r)(s) of SC/ST (POA) Act on the basis of, *prima facie*, material available on record. In this way, the trial court has applied its judicial mind and after going through all the material available on record, the court has passed the reasoned order and hence, no interference is needed.

7. After hearing the parties concerned as well as material available on record, it is crystal clear that contention of appellants' counsel is neither tenable nor sustainable in the light of verbatim of the informant, who has specifically stated that appellants are said to have used abusive language indicating caste name. The contention of learned counsel for the State is quite relevant as per accusation made in the FIR. The



Investigating Officer has conducted investigation on all points and after completion of investigation submitted charge sheet under Sections 341, 323, 337, 448, 427, 504 and 34 of IPC and Section 3(i)(r)(s) of the SC/ST (POA) Act.

8. It is necessary to cite decision rendered by the Hon'ble Supreme Court in the case of *Sonu Gupta vs. Deepak Gupta and Others* reported in (2015) 3 SCC 424 in which at para 8 it has been held as follows:-

'8. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.'

9. From perusal of the order dated 24.08.2023 passed by Ist Additional Sessions Judge -cum- Special Judge, SC/ST (POA) Act, Sitamarhi in connection with Sahiyara P.S. Case No. 107 of 2023, it appears that the order has been passed upon due consideration of the case diary and charge-sheet coupled with material available on record.

10. Considering the facts and circumstances of the



case and also that a *prima facie* case has been found against the appellants having regard to the accusations made in the First Information Report and the material available on the record, this court is not inclined to interfere with the impugned order dated 24.08.2023.

11. Keeping in view all the aspects and discussions made above, I find no reason to differ from the finding of the trial court.

12. Accordingly, the present appeal is dismissed at the stage of admission itself.

(Alok Kumar Pandey, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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