

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4969 of 2024

Arising Out of PS. Case No.-125 Year-2021 Thana- AURAI District- Muzaffarpur

Vinay Kumar Mishra @ Vinay Mishra son of Late Dukhan Mishra Resident
of Village- Chainpur Dharaharawa, Ps- Aurai, Dist- Muzaffarpur

... .. Appellant/s

Versus

1. The State of Bihar bihar
2. Shalendra Chaudhari son of Chandeshwar Chaudhary village- Runni
Saidpur, Dist- Sitamarhi

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ranjeet Kumar Mishra, Adv.

For the Respondent/s : Mr.Usha Kumari 1, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

3 12-02-2025 Heard Mr. Ranjeet Kumar Mishra, learned counsel

for the appellant, Mrs. Usha Kumari No.1, learned APP as also

learned counsel for informant.

2. The appeal has been filed for the following relief:

*“That this is an appeal on behalf of
the appellant against the order dated 8-12-2023
as passed by the learned court of Special Judge
SC/ST (POA) Act, Muzaffarpur passed in G.R.
163 of 2021 arising out of Aurai P.S. Case No.
125 of 2021, District Muzaffarpur by which and
where under the learned court below has taken
cognizance 504 3-P.C against the appellant
under section 504 IPC and section 3(i)®(s) of*



the SC/ST(POA) Act which is not sustainable under the law.”

3. With the consent of the parties both the appeal as also Interlocutory Application no. 01 of 2024 are being taken up as the informant has appeared.

4. As per the prosecution story, the informant alleged that while going to his friends house after taking fish from the pond, the named accused persons assaulted and took away some money, besides mobile, gold chain etc. They also took the caste name in public view, later he went to the husband of the *Sarpanch*, namely, Vinay Kumar Mishra (appellant herein). Instead of taking appropriate steps, he too firstly abused and resorted to assault with unknown accused persons. This led to the FIR.

5. It is the case of the appellant that it is a belated FIR, no where in the first part of the FIR, the assault theory is on this appellant. At the fag end of the FIR, the story has been exaggerated that he went to the husband of the *Sarpanch* and was abused/assaulted. He submits that in that background, the police submitted final form against the appellant herein but differing from it, the learned Court below *vide* an order dated 08.12. 2023 took cognizance which led to the present appeal.



6. It is further case that his wife being the Sarpanch, there was no occasion for him to come for Panchayati, the main assault/abuse theory is on the other accused, in that background, he was rightly acquitted of the charges while submitting final form. The reason for delayed FIR is also not there. As such, interference is required.

7. Learned counsel for the informant, on the other hand, submits that contrary to the submission put forward by the learned counsel for the appellant, the fact remains that in the case diary, multiple independent witnesses have supported the prosecution story clearly reflecting that the occurrence has taken place both on the assault/abuse theory as also the informant approaching the appellant which followed another abuse/assault.

8. Cognizance was taken on 08.12.2023 but belatedly the appeal was filed 10 months later and thus, there is inordinate delay also in filing the appeal.

9. Learned APP, on the other hand, supports the submission put forward by the learned counsel for the informant and submits that the content of the First Information Report itself shows that *prima facie* case against this appellant inasmuch as the informant has alleged that when he went to his place for a Panchayati, he was abused/assaulted. She submits



that there is delay of almost 203 days in filing the present appeal.

10. Having gone through the facts and submissions of the parties, a bare perusal of the FIR would show that the informant has made allegation against the appellant that when he approached him for a Panchayati after the assault/abuse by the other accused persons, he was not only abused, on objection, along with other accused persons assaulted him. The delay is there in lodging of the FIR but that does not make the case weaker in the background of the submission of learned counsel for the informant, not refuted by the appellant that in the case diary, the independent witnesses have supported the prosecution story.

11. In that background, no relief can be granted to the appellant and it would be appropriate that the appellant faces trial.

12. Accordingly, the instant appeal along with Interlocutory Application no. 01 of 2024 stand dismissed.

(Rajiv Roy, J)

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