

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5316 of 2024

Arising Out of PS. Case No.-21 Year-2019 Thana- NAYA RAM NAGAR District- Munger

1. Sudhakar Prasad Singh @ Sudhakar Kumar Son of Late Ramcharitar Singh Resident of Mohalla - Chandanpura, P.S. - Naya Ram Nagar, District - Munger
2. Diwakar Prasad Singh @ Diwakar Kumar Son of Late Ramcharitar Singh Resident of Mohalla - Chandanpura, P.S. - Naya Ram Nagar, District - Munger
3. Pankaj Kumar Singh @ Pankaj Kumar Son of Late Madhukar Singh Resident of Mohalla - Chandanpura, P.S. - Naya Ram Nagar, District - Munger

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajendra Das Son of Late Lakhan Das Resident of Mustfachak, P.S. - Naya Ram Nagar, District - Munger

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mritunjay Kumar, Adv. Ms. Shilpi Singh, Adv. Mr. Vibhuti Kumar, Adv.
For the Respondent/s	:	Mr. Binay Krishna, APP Mr. Rajesh Kumar, Adv. Mr. Kumar Baith, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 05-02-2025 Heard learned counsel for the appellant, the State as

also the respondent no. 2.

2. The present appeal has been filed:

against the order dated 08.10.2024

*passed by Court of Learned Special Judge
(SC/ST Act), Munger in Nayaramnagar P.S.
Case No. 21 of 2019 whereby the petition
dated 04.04.2024 filed by the appellants in
pursuance of order dated 15.03.2024 passed
in CR. APP (SJ) No.4957 of 2023 by Hon'ble*



Patna High Court, under section 216 of Code of Criminal Procedure for alteration of erroneous and improper charges framed against them has been rejected in most mechanical manner and without application of mind.

3. The matrix of facts giving rise to the present appeal is/are as follows:

The allegation is that on 20.01.2019 in the night, the appellant came to the informant's house and after abusing, took caste name, assaulted and also opened fire. The further allegation is that two of the appellants (appellant no. 1, Sudhakar Prasad Singh and appellant no. 3, Pankaj Kumar Singh) set the house on fire. This resulted into two she goats, hen and eggs consigned to the flames. Land dispute has been reasoned out for the said assault and earlier, the further allegation is that the accused persons had taken away the 'Sagwan' tree standing on the land of the informant. This followed the FIR.

4. The police investigated the matter and promptly submitted charge-sheet ten days later i.e. on **31.01.2019** vide **charge-sheet no. 11 of 2019** under Sections 341, 323, 436, 504, 506/34 IPC and 27 Arms Act, Section 3(1)(r)(s) of SC and ST Act. Once the **cognizance** was taken on **16.12.2021**, the journey



of the appellants to Patna High Court started inasmuch as immediately thereafter, the **Cr. Misc. No. 1992 of 2023** was preferred which came to be withdrawn on **11.10.2023** (Annexure No. 6 to the petition).

5. In between, **charges were framed** against the accused persons on **16.01.2023**.

6. The appellants once again knocked the doors of Patna High Court in **Cr. Appeal (SJ) No. 4957 of 2023** which was dismissed on **15.03.2024** as not being maintainable with the observation that they should have instead moved under Section 216 of the Cr.P.C. before the Trial Court to raise their grievance (Annexure-2 to the petition).

7. This followed petition before the learned Trial Court. However, vide an order dated **08.10.2024**, the same came to be rejected and the reason has been assigned as under:

Heard both sides and perused the material on record. From the perusal of record it appears that the informant Rajendra Das has mentioned in his fardbeyan as well as in para 2 of the case diary specifically that on 20.01.2019 at 10 'O' clock night the accused petitioner namely Sudhakar, Diwakar & Pankaj Kumar came to the house of informant and started abusing him by



calling sala chamar. Thereafter, all of them started beating him and the accused petitioner namely Pankaj Kumar fired with a country made pistol which hit to mother-in-law (saas) of the informant. Thereafter, the accused petitioner Sudhakar Kumar sprinkled kerosene oil and on his instigation Diwakar Kumar lit the safety matches in his house due to which two goats, hens, cocks, eggs and a chowki burnt. He has also corroborated the above facts in his statement before the court as PW1. Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act dealt with "whoever, not being a member of a Scheduled Caste or a Scheduled Tribe; intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view" and Section 3(1)(s) dealt with "whoever, not being a member of a Scheduled Caste or a Scheduled Tribe; abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view."

In Criminal Appeal No. 1709 of 2014 (P. Kartikalakshmi vs Sri Ganesh & Anr.) Hon'ble



Supreme Court observed that " Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance



with law."

So, from perusal of the case record as well as statement made at by the bar and analysis of Section 3(1)(r) and Section 3 (1)(s) of the Scheduled Caste or Scheduled Tribe (Prevention of Atrocities) Act and on the basis of case law (Supra), it appears that the petition u/s 216 of the Cr.P.C. 'filed on behalf of the petitioners has no merit and as a result this petition is hereby dismissed.

Put up on 22.11.2024 for recording of Prosecution Evidence.

Dictated

sd/-

Special Judge (Sc/St Act)

8. Still aggrieved, the present appeal.

9. It is the case of the appellants that the hut of the informant is at a secluded place and as such, it cannot be said that the abuse/taking of the caste name has been done in public and thus the different sections of SC/ST Act was not applicable. Learned counsel submits that despite the specific averment made in this regard before the concerned Court, the same was ignored and in a routine manner, the order was passed which has been challenged.



10. In this case, the informant has appeared and besides informing that the trial is on and altogether three witnesses have already been examined, the further submission is that the appellants have ignored the fact that besides the abuse, they also opened fire and put the hut on flame. The opening of fire and putting the hut on flame in the dead of the night beside the abuse definitely attracted the local villagers and the alibi that the hut being at a secluded place cannot be the reason to ignore the abuse and/or taking the caste name.

11. The further submission is that the burning of the hut caused damage to the property of the informant as she goats, hens and the eggs, all perished. He as such, submits that the appellants who are in the habit of approaching the High Court at the drop of the hat, now the time has come that they face trial so that the same is taken to its logical conclusion.

12. Learned Spl. P.P. also supported the submissions put forward by the learned Counsel for the informant and submits that a land dispute/any dispute between the parties clearly shows that both the parties are known to each other and in that background, **Section 3(2)(va)** of the **Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989** (henceforth for short, '**the 1989 Act**') automatically gets attracted where the offence is committed against a person or property



knowing that such person is a member of Scheduled Caste or a Scheduled Tribe.

13. Having gone through the facts of the case and the materials on record as also the submissions put forward by the learned counsel for the informant and the State are worth consideration. The allegation is that the appellants opened fire, put the hut on fire which resulted into the damage to the property.

14. At this stage, it is important to incorporate Section 3(2)(va) of 'the 1989 Act' which read as follows:

3. Punishments for offences atrocities –

Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, –

(va) commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine;

15. The aforesaid section clearly shows that when any offence is committed against a person or property knowing that such person is a member of Schedule Caste of Schedule Tribe or such property belongs to such member, the SC/ST shall be attracted.



16. The trial is on, the witnesses are being examined, in that background, it would be appropriate that the appellants take the same to its logical conclusion. They are free to put forward all their point/views to show their innocence before the learned Trial Court.

17. So far as the present appeal is concerned, it is bereft of being considered and/or any relief to be extended.

18. Cr. App (SJ) No. 5316 of 2024 stands dismissed.

(Rajiv Roy, J)

Vijay Singh/-

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