

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.871 of 2024

Arising Out of PS. Case No.-34 Year-2021 Thana- SC/ST District- Jamui

Md. Shamsh Alam @ Shams Alam @ Shamsh Malik @ Chhotu SON OF
MD. DANIK MALIK @ DEVIK MALIK @ CHHOTU@ MD. HUSSAIN
AHMAD RESIDENT OF MOHALLA - AZAD NAGAR, PS- JAMUI, DIST-
JAMUI

... .. Appellant/s

Versus

1. The State of Bihar BIHAR
2. SUNITA DEVI WIFE OF DINANATH PASWAN RESIDENT OF
MOHALLA - MAHISAUDI, PS- JAMUI, DIST- JAMUI

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Ranjan, Advocate

Ms. Ginni Priya, Advocate

Mr. Anuj Kumar

Ms. Sagrika

For the Respondent/s : Mrs. Usha Kumari 1

For the informant : Mr. Satya Prakash Parasar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 9 17-03-2026 1. The appellant has filed the present appeal being aggrieved by the order of cognizance dated 01.12.2023 passed by learned Addl. District & Sessions Judge 1st -cum- Special Court S.C. / S.T. P.O.A. Act and POCSO Act in connection with Jamui S.C. / S.T. P.S. Case No. 34 of 2021 registered under Section 147, 149, 341, 323, 379, 354, 504, 506 of I.P.C. and Section 3(i)(r)(s) SC/ST Act whereby the learned Special Court has differed with



the Police report and took cognizance of the offence against the appellant under Section 341, 323, 504, 506 of the I.P.C. and Section 3(1)(r)(s), 3(2)(va) of the S.C./ S.T. P.O.A. Act

2. The prosecution case in short is that on 25.06.2021 at 7:30 P.M. the informant along with her husband Dinanath Paswan was feeding their cows. Her neighbour i.e. appellant and other co-accused persons arrived there and started taking away the cows. The informant and her husband objected the same, upon which Ashif Mallik and Humanyun Mallik started assaulting and abusing the informant by her caste name. They further threatened that they would outrage her modesty and on the order of one Ismail Mallik, Ashif opened the 'saree' of the informant and threw it away. On objection raised by the informant's husband, the appellant along with other accused persons assaulted him.

3. Learned counsel for the appellant argued that false and fabricated F.I.R. has been lodged against the appellant due to dispute between the co-accused and the informant's family in which entire family members have been made accused including the appellant. The appellant is working in the Ministry of Food Processing and Industries after completing his B.Tech, M.Tech and M.B.A. He has purposefully been made accused in order to



harass the appellant in abuse of the process of court, however, the Police investigated the matter and submitted final form exonerating the appellant and not sending him for trial. During course of investigation none of the witnesses has said anything against the appellant. Learned Special Court in the impugned order at one place has rightly said that there is no material on record to differ with the opinion of the I.O. but in the subsequent paragraph the learned Special Court in a mechanical manner has mentioned that “considering the above as well as material in the case diary, cognizance is taken against the appellant also”. No reason much less brief reason has been assigned by the learned Special Court while taking cognizance explaining the nature of material collected during the course of investigation.

4. On the other hand, learned counsel for the informant / respondent no. 2 argued that the appellant is named in the F.I.R. and Police during investigation has found material but with oblique motive has submitted final form not sending the appellant for trial. The Special Court has the power to differ with the Police report and finding material against the appellant the Special Court has rightly taken cognizance against the appellant also.



5. Mr. Sadanand Paswan, learned Special Public Prosecutor SC/ST Act referring to the case diary argued that no material has been brought on record against the appellant during the course of investigation. He placed paragraph no. 15 & 16 of the case diary in order to show that nothing has been said against the appellant by the witnesses.

6. I have heard learned counsel for the parties and have gone through the material on record including the impugned order.

7. The appellant is the neighbour of the informant and there was previous dispute between two of the family members of the appellant with the informant and her family members. The appellant has been working in the Ministry of Food Processing & Industries after passing B.Tech, M.Tech & M.B.A. Entire family of the co-accused including the appellant has been dragged in this case due to previous dispute. The Police after investigation submitted final form not sending the appellant for trial and exonerated him.

8. Learned Special Public Prosecutor SC/ST Act referred to the case diary and submits that no *prima facie* material is available against the appellant to take cognizance of offence under the SC/ST Act or any other Section of the I.P.C.

9. Considering the aforesaid discussions and the fact that



learned Special Court has not given brief reason and the material collected during the course of investigation for taking cognizance in the impugned order, I am of the opinion that the impugned order is not sustainable in the eye of law.

10. In the result, the order dated 01.12.2023 passed in Jamui S.C./S.T. P.S. Case No. 34 / 2021 including the entire prosecution against the appellant is hereby quashed.

(Anil Kumar Sinha, J)

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