IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.983 of 2022

Arising Out of PS. Case No.-167 Year-2018 Thana- KHODAWANDPUR District- Begusarai

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Vijay Kumar Jha Son Of Lae Shivchandra Jha Resident Of Village - And P.O.- Bara, P.S.- Khodawandpur, Distt.- Begusarai.

... ... Appellant/s

Versus

1. The State of Bihar
2. Geeta Devi W/o Ramchandra Choudhary Resident of Village - Singhia-Buzurg South, Ward no.12, P.S.- Bibhutipur, Distt.- Samastipur.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Mr. Pravin Kumar Mrs. Vaishnavi Singh
For the Respondent/s	:	Mr. Binay Krishna

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

9 20-01-2026 Heard the parties.

2. This appeal is filed against the order dated 18.09.2021 passed by learned Special Judge, SC/ST (POA) Act, Begusarai in Khodawandpur P.S.Case No.167/2018 by which the learned Special Judge, SC/ST (POA) Act, Begusarai has rejected the application filed by the appellant under Section 227 of Cr.P.C. holding that there are sufficient prima facie materials on the record for framing of charges against the appellant under sections 341, 323, 420, 467, 468, 471, 504, 506/34 of the Indian Penal Code and section 3(1)(r), (s), (w), 3(2) (va) of the SC/ST (PoA)Act.

3. The prosecution case in brief is that one Geeta Devi filed a complaint petition in the court of learned Special Judge, SC/ST (PoA) Act, Begusarai being Complaint Case No.56 C of 2018 stating therein that she has talked to accused no. 1 for purchasing 3 katha 2 dhurs and 10 dhurki of land for a consideration amount of Rs.28 lacs for the purpose of construction of her house. She went at the land and after being satisfied, asked the appellant to demarcate the land and also asked for construction of the boundary on the land but the accused no.1 stated that only after deposition of the consideration amount, measurement will be done and boundary wall will be constructed. Thereafter, the complainant asked the accused no. 1 to prepare the sale deed and has said that she will give the consideration money when the deed will be placed before the Registrar but the same has been denied by the accused no. 1.

4. Acting upon the same, the complainant, after selling the house and land of her parental home, had given Rs.8 lacs to accused no.1 at the house of Munsi Ram Padarath Mahto in presence of witness Rahul Kumar and accused also gave receipt of receiving the said amount. Again Rs.12 lacs was given in the hand of accused for which receipt was given to her

and again Rs.5 lacs was given to accused No.1 and thereby she paid the consideration amount and also gave Rs.32,000/- in cash for purchasing the documents of registry. After the deed was registered, complainant told the accused no.1 that if demarcation will be done she will purchase bricks and sands for construction of the house but till date, the accused has not demarcated the land rather accused no.1 and 2 abused the complainant and her witness by taking caste name and has also said that he will not measure the land and and threatened the complainant that if she will go to the land in question then she will be cut into pieces. It is also alleged that both the accused persons have assaulted the complainant with fist and slaps and misbehaved with her.

5. On the basis of the aforesaid complaint, the police has registered an FIR bearing Khodawandpur P.S.Case No.167 of 2018 under sections 341, 323, 354, 406, 420, 467/504 of the Indian Penal Code and sections 3(r)(s) of the SC/ST (PoA) Act and after investigation, submitted charge-sheet being Chargesheet No.30/2019 dated 5.3.2019.

6. It has been submitted by the learned counsel for the appellant that at the stage of framing charge, an application was filed on behalf of the appellant under section 227 of the

Code of Criminal Procedure and rejoinder was filed on behalf of the prosecution to the said application filed by the appellant under section 227 of the Cr.P.C. thereafter the learned Special Judge, SC/ST (PoA) Act, Begusarai vide order dated 18.09.2021 has rejected the petition filed by the appellant.

7. Learned counsel for the appellant further submits that upon bare perusal of the complaint, it appears that no offence under sections 406, 420, 467 or 354 of the Indian Penal Code will be made out against the appellant as upon payment of the above-mentioned consideration amount, the sale deed of 3 katha 02 dhurs 10 dhurki of land was executed. He also submits that the complainant/informant also came in possession of the plot in question.

8. Learned counsel for the appellant has further submitted that the appellant has sold his entire land i.e. 3 katha, 2 dhurs, 10 dhurki land to the complainant and now he has no land in the aforesaid two khesra being Khesra No. 1297 and 1298/2093 of Khata no.281 and once the appellant has sold his entire share of land of the aforesaid khesra, there was no question of any demarcation to be done by him.

9. Learned counsel for the appellant has submitted that only after measurement of the land in question, the

complainant purchased the land and she has not even given the full consideration amount. He further submits that the learned Special Judge ought to have taken into consideration provisions of sections 420, 467, 468 and other provisions of the Indian Penal Code before passing the impugned order.

10. Learned counsel for the appellant,relying on the aforesaid submissions, has submitted that the learned Special Judge has erred in rejecting the application filed on behalf of the appellant under section 227 of the Cr.P.C. and if the impugned order is allowed to stand, the same will cause irreparable loss to the appellant and the same will be the abuse of the process of court.

11. In support of his submissions, learned counsel for the appellant has relied upon Judgment of the Hon'ble Supreme Court passed in case of ***Hitesh Verma Versus State of Uttarakhand*** reported in ***(2020) 10 SCC 710.***

12. Learned counsel for the State has opposed the prayer of the appellant and has supported the impugned order.

13. I have heard and considered the submission of the parties.

14. The central issue in the present case is with respect to sale of a piece of land for which the appellant had

allegedly sold 03 katha 02 dhurs 10 dhurki of land and the complainant had made a payment towards the aforesaid purchase. From the reading of the complaint petition and the solemn affirmations, it is clear that the dispute between the parties is with respect to the denial of possession by the accused persons which is civil in nature and is being given a criminal colour for vexatious purposes.

15. The Hon'ble Supreme Court in the case of Rikhab Birani v. State of U.P. reported as 2025 SCC OnLine SC 823 has held as under:-

> ***14.*** *During the last couple of months, a number of judgments/orders have been pronounced by this Court, especially in cases arising from the State of Uttar Pradesh, deprecating the stance of the police as well as the courts in failing to distinguish between a civil wrong in the form of a breach of contract, non-payment of money or disregard to and violation of contractual terms; and a criminal offence under Sections 420 and 406 of the IPC, the ingredients of which are quite different and requires mens rea at the time when the contract is entered into itself to not abide by the terms thereof.*
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> ***15.*** *In Lalit Chaturvedi v. State of Uttar Pradesh, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar, wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires*

the following ingredients to be satisfied:

> *"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:*
>
> *(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;*
>
> *(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and*
>
> *(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property."*

16. *Reference was also made to the decision in V.Y. Jose v. State of Gujarat and it was observed:*

> *"7. Similar elucidation by this Court in "V.Y. Jose v. State of Gujarat", explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of*

the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in "Hira Lal Hari Lal Bhagwati v. CBI", "Indian Oil Corporation v. NEPC India Ltd.", "Vir Prakash Sharma v. Anil Kumar Agarwal" and "All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain"."

***17.** This Court, in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.*

***18.** In Kunti v. State of Uttar Pradesh[11], this Court referred to Sarabjit Kaur v. State of Punjab[12] wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating* *unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.*

19. *It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature.13 The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure.14 Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.*

20. *In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh,15 this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in Thermax Limited v. K.M. Johny16, which held that courts should be* *watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.*

21. *Lastly, we would refer to another detailed judgment of this Court in Sharif Ahmed v. State of Uttar Pradesh17, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:*

> *"36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property*

must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. *The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.*

38. *An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially : to compel or deter by or as if by threats. The threat communicated or*

uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in Manik Taneja v. State of Karnataka, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threating another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct."

22. *Significantly, this Court in Sharif Ahmed (supra) cautioned courts to check such attempts of making out a criminal case on the basis of vague and ex* *facie false assertions.*

23. *Further, Sharif Ahmed (supra) exposits the legal position relating to the ingredients and contents of a chargesheet, drawing upon several earlier judgments of this Court which elucidate the contents of a police report under Section 173(2) of the Cr.P.C. It also clarifies the course of action to be adopted by the Magistrate when the chargesheet is found to be incomplete or vague in content. In this context, reference may be made to Sections 190 and 204 of the Cr.P.C., as well as Sections 211 to 213 and 218 of the Cr.P.C., which collectively govern the framing and contents of a charge. Some of the portions of this judgment are reproduced below:*

> *"13. The question of the required details being complete must be understood in a way which gives effect to the true intent of the chargesheet under Section 173(2) of the Code. The requirement of "further evidence" or a "supplementary chargesheet" as referred to under Section 173(8) of the Code, is to make additions to a complete chargesheet8, and not to make up or reparate for a chargesheet which does not fulfil requirements of Section 173(2) of the Code. The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should prima facie show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on*

further evidence. The trial can proceed on the basis of evidence and material placed on record with the chargesheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges.

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16. This Court in Bhushan Kumar v. State (NCT of Delhi) while referring to Sections 190 and 204 of the Code has observed that the expression "cognisance" in Section 190 merely means "becoming aware of", and when used with reference to a court or a judge it connotes "to take notice of judicially". It indicates the juncture at which the court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such an offence. This is different from initiation of proceedings. Rather, it is a condition precedent to the initiation of proceedings by a Magistrate or judge. At this stage, the Magistrate has to keep in mind the averments in the complaint or the police report, and has to evaluate whether there is sufficient ground for initiation of proceedings. This is not the same as the consideration of sufficient grounds for conviction, as whether evidence is sufficient for supporting the conviction or not, can be determined only at the stage of trial, and not at the stage of cognisance. This aspect is important and will be *subsequently referred to when we examine the decision of this Court in K. Veeraswami v. Union of India, and the observations therein which have been referred to on several occasions in other judgments.*

17. *Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issue of summons and this is not a prerequisite for deciding the validity of the summons. Nevertheless, the requirement of the Code is that the summons is issued when it appears to the Magistrate that there is sufficient ground for proceeding against the accused. Summons is issued to the person against whom the legal proceedings have commenced. Wilful disobedience is liable to be punished under Section 174 of the Penal Code, 1860. As a sequitur, keeping in mind both the language of Section 204 of the Code and the penal consequences, the Magistrate is mandated to form an opinion as to whether there exists sufficient ground for summons to be issued. While deciding whether summons is to be issued to a person, the Magistrate can take into consideration any prima facie improbabilities arising in the case. The parameters on which a summoning order can be interfered with are well settled by the decision of this court in Bhushan Kumar (supra). The Magistrate in terms of Section 204 of the Code is required to exercise his judicial discretion with a degree of caution, even when he is not required to record reasons, on whether there is sufficient ground for proceeding. Proceedings initiated by a criminal*

court are generally not interfered with by High Courts, unless necessary to secure the ends of justice.

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19. *Sections 211 to 213 and Section 218 of the Code deal with the contents of the charge. The object and purpose of these provisions is to bring the nature of allegations against the accused to his notice. These allegations have to be proved and established by leading evidence. The accused should not be taken by surprise or be unbeknownst so as to cause prejudice to him. The provisions of the Code also prescribe how to interpret the words used in the charge in terms of Section 214 of the Code, the effect of defects in the charge in terms of Section 215 of the Code, the power of the court to alter the charge and recall of the witnesses when a charge is altered in terms of Sections 216 and 217 of the Code.*

20. *There is an inherent connect between the chargesheet submitted under Section 173(2) of the Code, cognisance which is taken under Section 190 of the Code, issue of process and summoning of the accused under Section 204 of the Code, and thereupon issue of notice under Section 251 of the Code, or the charge in terms of Chapter XVII of the Code. The details set out in the chargesheet have a substantial impact on the efficacy of procedure at the subsequent stages. The chargesheet is integral to the process of taking cognisance, the issue of notice and framing of charge, being the only investigative*

document and evidence available to the court till that stage. Substantiated reasons and grounds for an offence being made in the chargesheet are a key resource for a Magistrate to evaluate whether there are sufficient grounds for taking cognisance, initiating proceedings, and then issuing notice, framing charges etc.

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26. *The object and purpose of the police investigation is manyfold. It includes the need to ensure transparent and free investigation to ascertain the facts, examine whether or not an offence is committed, identify the offender if an offence is committed, and to lay before the court the evidence which has been collected, the truth and correctness of which is thereupon decided by the court.*

27. *In H.N. Rishbud and Inder Singh v. State of Delhi21, this Court notes that the process of investigation generally consists of : 1) proceeding to the concerned spot, 2) ascertainment of facts and circumstances, 3) discovery and arrest, 4) collection of evidence which includes examination of various persons, search of places and seizure of things, and 5) formation of an opinion on whether an offence is made out, and filing the chargesheet accordingly. The formation of opinion is therefore the culmination of several stages that an investigation goes through. This Court in its decision in Abhinandan Jha v. Dinesh Mishra22 states that the submission of the chargesheet or the final report is dependent on the nature of opinion formed, which is*

the final step in the investigation.

28. *The final report has to be prepared with these aspects in mind and should show with sufficient particularity and clarity, the contravention of the law which is alleged. When the report complies with the said requirements, the court concerned should apply its mind whether or not to take cognisance and also proceed by issuing summons to the accused. While doing so, the court will take into account the statement of witnesses recorded under Section 161 of the Code and the documents placed on record by the investigating officer.*

29. *In case of any doubts or ambiguity arising in ascertaining the facts and evidence, the Magistrate can, before taking cognisance, call upon the investigating officer to clarify and give better particulars, order further investigation, or even record statements in terms of Section 202 of the Code.*

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16. Further, in the case of ***Hitesh Verma (Supra)*** the Hon'ble Supreme Court had held as under:

11. *It may be stated that the charge-sheet filed is for an offence under Section 3(1)(x) of the Act. The said section stands substituted by Act 1 of 2016 w.e.f. 26-1-2016. The substituted corresponding provision is Section 3(1)(r) which reads as under:*

"3. (1)(r) intentionally insults or intimidates with intent to humiliate a member

of a Scheduled Caste or a Scheduled Tribe in any place within public view;"

12. The basic ingredients of the offence under Section 3(1)(r) of the Act can be classified as

> *"(1) intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe and (2) in any place within public view".*

13. The offence under Section 3(1)(r) of the Act would indicate the ingredient of intentional insult and intimidation with an intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to either the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that Respondent 2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in *accordance with the procedure established by law. Such action is not for the reason that Respondent 2 is a member of Scheduled Caste.*

14. Another key ingredient of the provision is insult or intimidation in "any place within public view". What is to be regarded as "place in public view" had come up for consideration before this Court in the judgment reported as Swaran Singh v. State [Swaran Singh v. State, (2008) 8 SCC 435 : (2008) 3 SCC (Cri) 527] . The Court had drawn distinction between the expression "public place" and "in any place within public view". It was held that if an offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, then the lawn would certainly be a place within the public view. On the contrary, if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then it would not be an offence since it is not in the public view (sic) [Ed. : This sentence appears to be contrary to what is stated below in the extract from Swaran Singh, (2008) 8 SCC 435, at p. 736d-e, and in the application of this principle in para 15, below:"Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view."] . The Court held as under : (SCC pp. 443-44, para 28)

> *"28. It has been alleged in the FIR that Vinod Nagar, the first informant, was insulted by Appellants 2 and 3 (by calling him a "chamar") when*

> *he stood near the car which was parked at the gate of the premises. In our opinion, this was certainly a place within public view, since the gate of a house is certainly a place within public view. It could have been a different matter had the alleged offence been committed inside a building, and also was not in the public view. However, if the offence is committed outside the building e.g. in a lawn outside a house, and the lawn can be seen by someone from the road or lane outside the boundary wall, the lawn would certainly be a place within the public view. Also, even if the remark is made inside a building, but some members of the public are there (not merely relatives or friends) then also it would be an offence since it is in the public view. We must, therefore, not confuse the expression "place within public view" with the expression "public place". A place can be a private place but yet within the public view. On the other hand, a public place would ordinarily mean a place which is owned or leased by the Government or the municipality (or other local body) or gaon sabha or an instrumentality of the State, and not by private persons or private bodies." (emphasis in original)*

17. In view of the afore-quoted Judgments of the Hon'ble Supreme Court and upon reading of the complaint petition, it is clear that the abuses has taken place for occurrence relating to land and therefore, the provisions of SC/ST Act will not be applicable.

18. From the reading of the complaint case and from the discussions made herein above, it appears that there is no sufficient material against the appellant for which he shall be prosecuted under the provisions of IPC.

19. Considering the aforesaid, this appeal is allowed.

20. Accordingly, the order dated 18.09.2021 passed by the learned Special Judge, SC/ST (POA) Act, Begusarai in Khodawandpur P.S.Case No.167/2018, is hereby quashed.

(Sandeep Kumar, J)

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