

IN THE HIGH COURT OF JUDICATURE AT PATNA

Cr.Misc. No.37117 of 2007

- 1. GYAN PRAKASH SINGH, SON OF LAXMAN PRASAD SINGH, RESIDENT OF VILLAGE-AURAIYAN, P.S. KUDRA, DISTRICT-KAIMUR.**
 - 2. SANTOSH SINGH, SON OF LATE HIRA SINGH.**
 - 3. SANJAY SINGH, SON OF VIJAY BAHADUR SINGH. BOTH RESIDENT OF VILLAGE-SAMHAUTA, P.S. MOHANIA, DISTRICT-KAIMUR.**
 - 4. RAMTA SINGH, SON OF LATE KAPILDEO SINGH, RESIDENT OF VILLAGE-PIPRA, P.S. MOHANIA, DISTRICT-KAIMUR.**
-PETITIONERS.

Versus

- 1. THE STATE OF BIHAR.**
 - 2. RAM AUTAR RAM, SON OF LATE SURAJ RAM, RESIDENT OF VILLAGE-MURHARIYA, P.S. MOHANIA, DISTRICT-KAIMUR.**
-OPPOSITE PARTIES.

3. 28.11.2008. Heard Mr. Krishna Prasad, Senior Advocate, the learned counsel for the petitioners and Dr. Mayanand Jha, the learned A.P.P. for the State. Although O.P. No.2 in response to the notice validly served on him filed his vakalatnama, yet at the time of hearing of this application none was present to contest the application on his behalf.

All the four F.I.R. named accused of S.C. & S.T.(Dehri) P.S. Case No.31 of 2005 have prayed for the quashing of the order dated 4.12.2006 passed by the learned Chief Judicial Magistrate, Kaimur at Bhabhua, whereunder he has taken cognizance for offences punishable under Sections 323, 325,504/34 I.P.C. and Sections 3(1)(x)(xi) and (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as “the SC/ST Act”) and has ordered for issuance of summons.

The learned counsel for the petitioners has at the very outset

sought to impress upon me his intention to lay challenge to the impugned order only so far as it relates to the offences under the SC/ST Act and not those under the Penal Code.

To appreciate the matter, it would be worthwhile to notice the prosecution case with brevity. One Ram Avtar Ram, impleaded herein as O.P. No.2, submitted his written report to the police on 7.12.2005 inter alia alleging that on the previous day (6.12.2005) while he was ploughing his fields with a tractor, at about 3 P.M. all the four persons armed with guns and resorting to firing arrived on his fields and accused Ramta Singh, addressing him as Chamar castigated his audacity for litigating with them and ordered to kill him. It is alleged that all the accused persons pounced upon him and assaulted him with lathi and the butt of the guns as a result whereof he sustained injuries on his back, legs and arms. It is also alleged that while departing the accused persons threatened him not to register a case for the occurrence. It is further stated that the sound of gunfire and quarrel attracted the nearby villagers who came and removed him to hospital for treatment.

The submission advanced by the learned counsel for the petitioners is that from the recital in the written report and the materials available on record none of the offences under the SC/ST Act whereunder cognizance has been taken are made out. In this connection, it was pointed out that offences under Sections 3(1)(xi) and (xii) of the SC/ST Act clearly relates to woman victims but in this case there is no indication to show the presence of any woman at the

place of occurrence much less any woman being subjected to atrocities. It was also submitted that even the offence under Section 3(1) (x) of the SC/ST Act was not made out as the occurrence did not take place in “public view” as there is no indication of any person at the P.O. save and except the informant and the assailants nor is there any indication that the castigation or the assault was in the presence of others.

There appears sufficient force in the submissions advanced by the learned counsel for the petitioners and with the informant absenting himself the submissions remain unrebutted.

In the result the application is allowed in part to the extent that the cognizance taken under the SC/ST Act is quashed. The petitioner shall however be tried for the offences under the Penal Code.

NKS/-

(Abhijit Sinha,J)

