

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23987 of 2017

Arising Out of PS.Case No. -17 Year- 2016 Thana -BUDDHACOLONY District- PATNA

1.Yasoda Devi wife of Late Ram Murti Rai, resident of Dujra Devi Asthan, in front of Gate No.5, P.O.-G.P.O., P.S.-Budha Colony, District- Patna
2. Mamta Devi wife of Manoj Kumar Yadav, resident of Dujra Devi Asthan, in front of Gate No.15, P.O.-G.P.O., P.S.-Budha Colony, District- Patna

..... Petitioner/s

Versus

The State of Bihar

..... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raghav Prasad No.1, Advocate
For the State : Mr. Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 31-01-2018

Heard learned counsel for the petitioners and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioners for quashing the order dated 31.08.2016 passed by the learned Judicial Magistrate-1, Patna in Budha Colony P.S. Case No.17 of 2016 by which cognizance has been taken for the offences under the Indian Penal Code and Dowry Prohibition Act as well as Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'Act of 1989') and the petitioners have been summoned to face trial.

3. Learned counsel for the petitioners submitted that in view



of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'Amendment Act, 2015') which came into effect from 26.01.2016, the learned Magistrate had no jurisdiction to take cognizance of the offence under the Act of 1989. He submitted that from a reading of proviso (2) of the substituted Section 14(1) of the Act of 1989 it would appear that the Special Courts and the Exclusive Special Courts established under the Act of 1989 have been vested with the power to directly take cognizance of the offense punishable under the Act of 1989. He submitted that in **Bisheshwar Mishra & Anr. vs. The State of Bihar [(2016)4 PLJR 1058]**, a Division Bench of this Court has categorically held that in view of substituted section 14 of the Act of 1989, the police is required to transmit the FIR after institution of the case to the Special Court or Exclusive Special Court as a court of original jurisdiction and for the same reason the charge-sheet or a complaint is also required to be filed before the Special Court or Exclusive Special Court for the offences under the Act of 1989. He submitted that from the date of coming into force of the Amendment Act, 2015, the court of Magistrate being not Special Court or Exclusive Special Court within the meaning of Section 14 of the Act of 1989 shall not have any jurisdiction to entertain any application and take cognizance of the offence under the Act of 1989.



4. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State conceded that in view of the ratio laid down by the Division Bench in **Bisheshwar Mishra** (supra) the order impugned passed by the learned Magistrate cannot be sustained.

5. I have heard learned counsel for the parties and perused the record.

6. It would be manifest from the record that the FIR was instituted on 20.01.2016 under Sections 341, 323, 379, 498A, 504 and 506 read with Section 34 of the I.P.C., Section 3(1)(x) of the Act of 1989 and Sections 3 and 4 of the Dowry Prohibition Act against the petitioners and others on the basis of a written report submitted by one Jyotsna Kumari daughter-in-law of petitioner no.1.

7. She alleged that she performed love marriage with co-accused Sunil Kumar, but after marriage she was subjected to cruelty by her husband and family members and they frequently abused her by taking her caste name.

8. The case was investigated upon and on completion of investigation, the police submitted charge-sheet against the petitioners and others vide charge-sheet no.234/2016 dated 13.08.2016 in the court of Magistrate.

9. After perusal of the FIR, the statements of the witnesses recorded under Section 161(3) of the Cr.P.C. and the police report



submitted under Section 173(2) of the Cr.P.C., the learned Magistrate took cognizance of the offences, *inter alia*, under Section 3(1)(x) of the Act of 1989 and summoned the petitioners vide impugned order dated 31.08.2016. The aforesaid order dated 31.08.2016 is under challenge in the present application.

10. The issue raised by the petitioners in the present case is no more *res Integra*. In **Bisheshwar Mishra** (*supra*) after taking into consideration the relevant provisions of the Act of 1989 and the amendment brought therein vide Amendment Act, 2015 and the provisions prescribed under Sections 193 and 209 of the Cr.P.C. the Division Bench held as under:-

*“In the backdrop of the second proviso to the substituted Section 14(1) of the Act, which specifically confers power upon the **Special Court** and the **Exclusive Special Court** to take cognizance of the offences under the Act directly, it would be evident that an exception to the general rule under Section 193 of the Code has been created.”*

*“There is no dispute with regard to fact that the Act is a Special Act and the second proviso to Section 14(1) of the Act, positively and unequivocally, provides that the **Special Court**, which is essentially a Court of Session, shall have power to directly take cognizance of the*



offence. Hence, the interdict of Section 193 of the Code has been removed by making specific provision in the Special Act.”

11. The Division Bench further held as under:-

*“In view of the legislative changes, as noticed hereinabove, it is of salience to note that in view of substituted Section 14 of the Act, the police is required to transmit the FIR, after institution of the case to **Special Court** or **Exclusive Special Court**, as a Court of original jurisdiction, and for the same reason, the charge-sheet or a complaint is also required to be filed before **Special Court** or **Exclusive Special Court** for the offences under the Act. It would be further evident that from the date of coming into force of the Amendment Act, 2015, the Court of Magistrate, being not a **Special Court** or **Exclusive Special Court** within the meaning of Section 14 of the Act, shall not have any jurisdiction to entertain any application and take cognizance of the offence under the Act. The requirement of the committal proceeding, under Section 209 of the Code, has also been done away with. The object behind doing so is to enable speedy and expeditious disposal of the cases.”*



12. In view of the ratio laid down by this Court in the case of **Bisheshwar Mishra** (supra) as the impugned order dated 31.08.2016 has been passed after the amendment brought under the Act of 1989, I am of the considered opinion that the same cannot be sustained. From the date of came into effect of the Amendment Act, 2015, the court of Magistrate being not a Special Court or Exclusive Special Court within the meaning of Section 14 of the Act had no jurisdiction to entertain any report filed under Section 173(2) of the Cr.P.C. and take cognizance of the offence under the Act of 1989.

13. In that view of the matter, the impugned order dated 31.08.2016 passed by the learned Judicial Magistrate, 1st Class, Patna is set aside and the matter is remanded back to the court of Special Judge, who shall look into the materials available on record and pass appropriate order in accordance with law.

14. The application is allowed to the extent indicated hereinabove.

(Ashwani Kumar Singh, J)

Md.S./-

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