

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.4941 of 2023

In

CRIMINAL MISCELLANEOUS No.71802 of 2022

Arising Out of PS. Case No.-481 Year-2018 Thana- SIWAN MUFFASIL District- Siwan

- =====
1. DR. DINESH KUMAR SINGH SON OF BIRENDRA PRASAD SINGH, RESIDENT OF PARAULI NEAR BRAHMASTHAN, DISTRICT - SIWAN
 2. CHHOTAN KUSHWAHA @Ajay Kumar Son Of Sudharshan Prasad, Resident Of Village - Pakri Bengali, District - Siwan
 3. BACHHA KUSHWAHA @ VIJAY KUMAR SON OF SUDHARSHAN PRASAD RESIDENT OF VILLAGE - PAKRI BENGALI, DISTRICT - SIWAN
 4. SUBHASH KUMAR SINGH SON OF BINDYACHAL SINGH RESIDENT OF PURABH TOLA, BENSUR BUZURG, DISTRICT - SIWAN
 5. Dr. Sharad Choudhary @DR. SHARAD KUMAR SON OF SHANKAR CHOUDHARY RESIDENT OF VIJAY HATA, DISTRICT - SIWAN

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. FALDAR SHARMA SON OF LATE SHIVAJI SHARMA RESIDENT OF VILLAGE - UPHAI RASULPUR, P.S. - MUFASSIL, DISTRICT - SIWAN

... .. Respondent/s

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The Present appeal has been filed under section 14(A)1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act, 1989 (in short the Act) against the order dated 15.11.2019 passed by learned Special Judge, SC/ST Act, Siwan in connection with Siwan Muffasil Mahadeva P.S. case No. 481/ 2018 whereby the learned trial court has taken cognizance of the offences punishable under sections 147, 148, 149, 323, 324, 325, 304, 504, 341, 342 and 379 of the IPC and sections 3(i)(r), 3(2)(va) of the SC/ST Act against the appellants.

The appellants argued that the informant, belonging to the Lohar caste, is classified as OBC based on the Supreme Court's ruling as held in a case **Writ petition (Civil) No. 1052 of 2021** Sunil Kumar Rai & Ors. vs. The State of Bihar, thus not qualifying for protection under the SC/ST Act.

The allegation of medical negligence against Dr. Dinesh Kumar Singh under Section 304 IPC was without obtaining a medical expert's opinion prior to the registration of an FIR, as per principle decided by Hon'ble supreme court in a case As reported in **(AIR 2005 SC 3180 Jacob Mathew vs. The State of Punjab.)**

Further , The appellants claimed that the prosecution party acted as aggressors, ransacking the appellant's clinic, with supporting evidence from independent witnesses and CCTV footage.

HELD, Admittedly the informant belongs to *Lohar* caste and he and his some relatives are said to be the victims, so, in view of the observation made by Hon'ble Apex Court in the above referred judgement of Sunil Kumar Rai (supra), the so-called victims do not fall in the category of SC/ST rather they fall in the category of OBC and for attracting the offences punishable under sections 3(i)(r) and 3(2)(va), the victim must be belonging to either SC or ST, so, on this aspect the cognizance of the said offences is against the provisions of SC/ST Act and so far as the offence under section 304 of the IPC is concerned, there is no material on record to show that the I.O. took any opinion from medical experts regarding the allegation of committing medical negligence by the appellant No.1 in respect of death of informant's nephew and the same is also in violation of the principle settled by the Hon'ble Apex Court in the above referred judgement of Jacob Mathew (supra) and in view of the materials available in the case diary, it is evident that the prosecution party was aggressor

and committed mischief in the clinic of appellant No.1 and if the appellants are put on trial for the alleged offences then it would amount to an abuse of process of court and also, would defeat the ends of justice

Accordingly, It appears that the learned trial court has taken cognizance in mechanical manner and the order impugned is not sustainable in the eyes of law,- so it stands set aside and the subsequent proceeding, if any, have arisen after passing of the impugned order in the learned trial court shall also remain set aside.

APPEAL ALLOWED

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SIWAN
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OF PURABH TOLA, BENSUR BUZURG, DISTRICT - SIWAN
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VILLAGE - UPHAI RASULPUR, P.S. - MUFASSIL, DISTRICT - SIWAN

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Mukesh Kant, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

8 22-04-2024 1. Heard Mr. Mukesh Kant, learned counsel for the

 appellants. Nobody appears on behalf of the State as well as

 respondent No.2.

 2. The instant appeal has been filed under section

 14(A)1) of the Scheduled Caste and Scheduled Tribe

 (Prevention of Atrocities Act, 1989 (in short the Act) against the

 order dated 15.11.2019 passed by learned Special Judge, SC/ST



Act, Siwan in connection with Siwan Muffasil Mahadeva P.S. case No. 481/ 2018 whereby the learned trial court has taken cognizance of the offences punishable under sections 147, 148, 149, 323, 324, 325, 304, 504, 341, 342 and 379 of the IPC and sections 3(i)(r), 3(2)(va) of the SC/ST Act against the appellants.

3. Learned counsel for the appellants submits that as per the F.I.R. lodged by the victim himself, the appellants abused him by using his caste name as *Lohar* but as per observation made by the Hon'ble Supreme Court in its judgement passed in **Writ petition (Civil) No. 1052 of 2021** titled as **Sunil Kumar Rai & Ors vs. the State of Bihar & Ors**, *Lohar* caste in Bihar is included under the OBC and at present, *Lohar* caste does not fall under the ambit of SC or ST and in this regard, paragraph 24 of the judgement may be perused. He further submits that by the order impugned, the learned trial court has taken cognizance of the offence under section 304 of the IPC along with other offences of the IPC and as per allegation, the informant's nephew died due to medical negligence committed by the appellant No.1, Dr. Dinesh Kumar Singh while providing medical treatment to the deceased boy but it is settled principle of law that before framing a doctor in respect of an offence coming under section 304 of the IPC in



relation to the allegation of having committed medical negligence, it is incumbent upon the police to take medical expert's opinion from the panel of doctors before registration of the F.I.R and in this regard, the principle laid down in the judgement of Hon'ble Apex Court passed in **Appeal (Crl) No. 144- 145 of 2004, (AIR 2005 SC 3180)** titled as **Jacob Mathew vs. The State of Punjab & Anr** may be perused. Learned counsel further submits that in fact, the prosecution party was aggressor and they themselves ransacked the clinic of appellant No.1 and committed mischief to the articles, furnitures and other medical equipments kept in the clinic and in this regard, statement of some independent witnesses in paragraphs 45 and 46 are relevant and in the case diary there is also details of CCTV footage showing the commission of mischief by the prosecution party.

4. Heard the learned counsel for the appellants, perused the impugned order and case diary and also taken into account the principles laid down by the Hon'ble Apex Court in the above referred judgments.

5.This court finds substance in the above submissions made by learned counsel for the appellants as admittedly the informant belongs to *Lohar* caste and he and his some relatives



are said to be the victims, so, in view of the observation made by Hon'ble Apex Court in the above referred judgement of Sunil Kumar Rai (supra), the so-called victims do not fall in the category of SC/ST rather they fall in the category of OBC and for attracting the offences punishable under sections 3(i)(r) and 3(2)(va), of which cognizance has been taken by the learned trial court, the victim must be belonging to either SC or ST, so, on this aspect the cognizance of the said offences is against the provisions of SC/SC Act and so far as the offence under section 304 of the IPC is concerned, there is no material on record to show that the I.O. took any opinion from medical experts regarding the allegation of committing medical negligence by the appellant No.1 in respect of death of informant's nephew and the same is also in violation of the principle settled by the Hon'ble Apex Court in the above referred judgement of Jacob Mathew (supra) and in view of the materials available in the case diary, it is evident that the prosecution party was aggressor and committed mischief in the clinic of appellant No.1 and if the appellants are put on trial for the alleged offences then it would amount to an abuse of process of court and also, would defeat the ends of justice. It appears that the learned trial court has taken cognizance in mechanical manner and the order impugned



is not sustainable in the eyes of law, so it stands set aside and the appeal stands allowed and the subsequent proceeding, if any, have arisen after passing of the impugned order in the learned trial court shall also remain set aside.

(Shailendra Singh, J)

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