IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3289 of 2019

Arising Out of PS. Case No.-8 Year-2017 Thana- RAIYAM District- Darbhanga

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1. Dhirendra Kumar Dhiraj @ Dheeraj Yadav, Son of of Mishrai Lal Yadav, Resident of Village - Gosai Tol Pachardhi, P.S.- Raiyan, Distt - Darbhanga.
2. Dharmendra Kumar Yadav @ Dharmendra Yadav, Son of Kishuni Yadav,Resident of Village - Gosai Tol Pachardhi, P.S.- Raiyan, Distt - Darbhanga.
3. Mishri Lal Yadav, Son of Late Kunju Yadav, Resident of Village - Gosai Tol Pachardhi, P.S.- Raiyan, Distt - Darbhanga.
4. Kishuni Yadav, Son of Late Kunju Yadav, Resident of Village - Gosai Tol Pachardhi, P.S.- Raiyan, Distt - Darbhanga.
5. Pintu Thakur @ Arvind Thakur, Son of Rajendra Thakur, Resident of Village - Chhacha, P.S.-Raiyam, Distt - Darbhanga.

... ... Appellants

Versus

The State of Bihar

... ... Respondent

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Acts/Sections/Rules:

- *Sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504, 506 of the Indian Penal Code*
- *Section 3 of the SC and ST Act.*

Cases referred:

- *Suresh Garodia vs. The State of Assam and Another, Criminal Appeal No.185 of 2024*
- *Kanchan Kumar vs. State of Bihar [(2022) 9 SCC 577]*
- *Hitesh Verma vs. State of Uttrakhand [AIR 2020 SC 558]*
- *Gulam Mustafa vs. State of Karnataka & Ors. [2023 SCC Online SC 603]*
- *State of Gujarat vs. Afroz Mohammed Hasanfatta [AIR 2019 SC 2499]*
- *State of West Bengal and Anr. vs. Mohammad Khalid and Anr. [(1995) 1 SCC 684]*
- *State of Gujarat vs. Dilip Sinh Kishoresinh Rao decided through Criminal Appeal No.2504 of 2023*
- *Sheoraj Singh Ahlawat and Ors. vs. State of Uttar Pradesh and Anr. [(2013) 11 SCC 476*
- *Sonu Gupta v. Deepak Gupta [(2015) 3 SCC 424]*

- *State of Maharashtra and Ors. vs. Som Nath Thapa and Ors. [(1996) 4 SCC 659]*
- *Vesa Holdings Private Limited v. State of Kerala [(2015) 8 SCC 293]*
- *State of Haryana vs. Bhajan Lal [1992 Supp (1) SCC 335]*

Appeal *- filed against order whereunder the learned Special Judge by taking different view from the police report, took cognizance against the appellants and issued process for facing trial for the offences under Sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504, 506 of the IPC and Section 3 of the SC/ST Act.*

Held *- It appears that the core issue for the occurrence is the land dispute between the parties. It is apparent that for the same set of occurrence, a cross case was also lodged by the appellants' side. Therefore, the occurrence is an admitted position. It is well settled law that cognizance is taken for an offence and not against the accused. It also well settled law that Magistrate can take a different view that of the charge-sheet, as submitted by police qua accused persons, even exonerating and not sent up for trial. (Para 36)*

From the perusal of cognizance order, it appears that the statement of two injured witnesses were considered, who supported the involvement of all the FIR named accused persons including the appellants in the occurrence with specific allegation of assault causing bodily injuries. They have also received serious bodily injuries and on the basis of their statement, cognizance was taken against the appellants by taking a different note qua final form, therefore, it cannot be said that a prima facie case as to set out a criminal law into motion against the appellants is not made out. (Para 37)

Therefore, prayer as to quash order of cognizance and 'framing of charge' respectively does not have any merit, and same is declined to accept in view of aforesaid factual and legal reasons, as it relates for offences committed under Sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504 and 506 of the IPC. (Para 39)

It appears that the allegation under SC/ST Act was raised in the background of land dispute as to aggravate the allegation. It nowhere appears that the occurrence took place out of atrocities as defined within the meaning of SC and ST Act, 1989, which is admittedly, out of land dispute. It nowhere appears from the perusal of FIR that the uttering word 'Sala Chaupalwa' and spitting as alleged was made in public view. (Para 41)

Cognizance of the offence as taken vide order for the offence under Section 3(1)(r)(s) of the SC/ST Act by the learned Special Judge is bad in the eyes of law and, accordingly, same is herewith quashed and set aside. (Para 42)

Appeal is partly allowed. (Para 43)

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4. Kishuni Yadav, Son of Late Kunju Yadav, Resident of Village - Gosai Tol Pachardhi, P.S.- Raiyan, Distt - Darbhanga.
5. Pintu Thakur @ Arvind Thakur, Son of Rajendra Thakur, Resident of Village - Chhacha, P.S.-Raiyam, Distt - Darbhanga.

... ... Appellants

Versus

The State of Bihar

... ... Respondent

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate
		Ms. Vaishnavi Singh, Advocate
		Mr. Pravin Kumar, Advocate
For the Respondent-Stat	:	Mr. Sadanand Paswan, Spl. P.P.
For the Informant	:	Ms. Archana Sinha, Advocate
		Mr. Kedar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

CAV JUDGMENT

Date : 08-07-2024

The present memo of appeal is being preferred challenging the order dated 24.05.2019 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act,

Darbhanga in G.R. Case No.13 of 2017 arising out of Raiyam P.S. Case No.8 of 2017, whereby and whereunder the learned Special Judge by taking different view from the police report, took cognizance against the appellants and issued process for facing trial for the offences under Sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504, 506 of the Indian Penal Code (for short 'IPC') and Section 3(1)(r)s) of the SC and ST Act.

2. The brief facts of this case as speaks through written information of Shivan Chaupal (informant) that on 10.03.2017 at about 9.00 a.m. while he was sitting at his *Darwaja* (outer courtyard), Mishri Lal Yadav (appellant No.3) and his son Dheeraj Yadav (appellant no.1) along with 100-150 people started ploughing his residential land by using tractor. When the aforesaid act of appellants was protested by informant, Mishri Lal Yadav and his son ordered to their people that some treatment is required to informant, as he is trying to become a leader by referring the abusive words '*Sala Harijan Chaupalwa'* and on their saying, Mishri Lal Yadav (appellant no.3), his son, Dharmendra Yadav

(appellant no.2), Kishuni Yadav (appellant no.4), Parikshan Mandal, Ram Narayan Mandal, Bishwa Nath Sah, Suresh Mandal, Ram Bilash Mandal, Sobhi Mandal, Hare Mandal, Sukesh Mandal, Pawan Mandal, Shankar Mandal, Lalit Sah, Sujit Sah, Raghunath Thakur and Pintu Thakur variously armed with attacked on him and out of said physical assault, he fell down to the ground. Thereafter, Satto Chaupal (brother), Shanti Devi (wife), Manoj Chaupal (nephew) came running to the place of occurrence and rescued him, upon which, Dhirendra Kumar Dhiraj @ Dheeraj Yadav (appellant no.1) armed with *farsa* assaulted on the head of his wife due to which, blood started oozing. When his son came to rescue her, Dharmendra Kumar Yadav (appellant no.2) armed with *farsa* assaulted on his head. His brother Satto Chaupal was assaulted by Bishwanath Sah and Ram Narayan Mandal with iron rod. All the accused persons assaulted his family members badly. On hearing the alarm raised by them, villagers came to the place of occurrence, resultantly, the accused persons fled away from there and while running away, they looted different articles form the house of

informant worth of Rs.50,000/-. It is further alleged that Mishri Lal Yadav (appellant no.3) spitted on his wife's body and threatened to kill entire family members.

3. On the basis of aforesaid written information, a formal first information report was registered being Raiyam P.S. Case No.8 of 2017 dated 10.03.2017 under sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504, 506 of the IPC and Section 3(1)(r)s) of the SC and ST Act, 2015.

4. After completion of investigation, the police submitted charge-sheet against 13 accused persons, where Mishri Lal Yadav (appellant no.3), Dharmendra Kumar Yadav (appellant no.2), Kishuni Yadav (appellant no.4), Dheeraj Yadav (appellant no.1) and Pintu Kumar (appellant no.5) were not sent up for trial through Charge-sheet No.21 of 2018 dated 31.05.2018.

5. Upon perusal of materials collected during the course of investigation, the learned Special Judge, (SC/ST POA Act), Darbhanga through order dated 24.05.2019 by taking a different view with the final report, issued process

against the appellants as aforesaid, against whom the police have submitted final report, not sent up them for trial.

6. It is important to mention that during the pendency of present appeal, charges were framed against the appellants vide order dated 15.09.2022, where Mishri Lal Yadav (appellant no.3) challenged the said order dated 15.09.2022 before this Court through Cr. Revision No.686 of 2022 but, as same was not maintainable, appellant filed an application for withdrawal of the said criminal revision and vide order dated 02.03.2023/amended order dated 14.03.2023, this Hon'ble Court had pleased to permit withdrawal of aforesaid criminal revision application with liberty to file appropriate application at appropriate stage. It further appears that an I.A. No.1 of 2022 was filed by appellants in present appeal on 14.11.2022 with a prayer to make an amendment in prayer of appeal for challenging the order dated 15.09.2022 by which charges were framed against the appellants but, said I.A. was filed prior to the order passed in Cr. Revision No.686 of 2022 dated 02.03.2023/modified order dated 14.03.2023. Taking

shelter of aforesaid liberty, during pending proceedings, the appellants filed I.A. No.2 of 2023 in present appeal to quash the order dated 15.09.2022 also, wherein the charges were framed against the appellants by the learned Trial/Special Court.

7. It is further important to mention that vide order dated 14.12.2022 of this Court as passed by one of the learned co-ordinate Bench, the proceeding before the trial court *qua* appellants was stayed. The order dated 14.12.2022 as passed in present appeal is reproducing hereinbelow for the sake of convenience:-

> ***"Heard.***
>
> ***Admit.***
>
> ***Call for the lower Court records of G.R. Case No.13 of 2017 arising out of Raiyam P.S. Case No.08 of 2017 from the Court of learned Special Judge (SC/ST POA ACT), Darbhanga.***
>
> ***List this appeal on the receipt of the lower Court records.***
>
> ***In the meantime, further proceedings of G.R. Case No.13 of 2017 arising out of Raiyam P.S. Case No.08 of 2017 pending in the Court of Special Judge***

(SC/ST POA ACT), Darbhanga shall remain stayed."

8. Being aggrieved from aforesaid stay order, the informant approached the Hon'ble Supreme Court through SLP (Crl.) Diary No(s).29623 of 2023, wherein the Hon'ble Supreme Court vide order dated 11.08.2023 passed following order, which for the sake of convenience and better understanding of proceedings between the parties also reproducing hereinbelow:-

"Upon hearing the counsel the Court made the following

O R D E R

Permission to file SLP is granted.

Delay condoned.

By the impugned order, the High Court had stayed the proceedings by the trial court. The informant/complainant claimed to be aggrieved and approached this Court. It appears that the High Court entertained the petition on the issue of maintainability of proceedings, having regard to Section 14A (2) of The Scheduled Castes And The Scheduled Tribes (Prevention of Atrocities) Act, 1989.

That issue has now been

concluded by a judgment delivered on 09.08.2023. In the circumstances, the High Court is required to dispose of the appeal {Criminal Appeal (SJ) No.3289 of 2019} as early as possible, preferably within four weeks. In case for some reason, the appeal cannot be disposed of, the High Court will consider whether to continue with the stay of proceedings.

Pending applications, if any, are disposed of."

9. Having all such background of proceedings and facts in hand, Mr. Ajay Thakur, learned counsel appearing on behalf of the appellants submitted that during the course of investigation, the scientific investigation was conducted by the police and on the basis of C.D.Rs. (Call Detail Records) and mobile tower location, as the appellants were not found present at the time and place of occurrence, which also supported by different witnesses during investigation, police submitted final report exonerating the appellants by not sending them for facing trial. It is also pointed out that for the same set of occurrence, co-accused Bishwanath Sah also lodged a case giving rise to Raiyam P.S. Case No.9 of 2017, where informant of this case stopped him to plough a piece

of agricultural land, having Khata No.4, Khesra No.398 by using tractor. It is also alleged that the co-accused Bishwanath Sah and others were assaulted by informant side. It is submitted that statement of co-accused Bishwanath sah was recorded at emergency ward of Darbhanga Medical College and Hospital (for short 'DMCH') on 10.03.2013, which is the basis of Raiyam P.S. Case No.9 of 2017 as aforesaid.

10. It is further stated by Mr. Thakur that from Annexure-3 of this appeal, which is the copy of FIR of Raiyam P.S. Case No.9 of 2013 dated 10.03.2017, authored by co-accused Bishwanath Sah regarding same occurrence, where he also received injuries, it nowhere appears that appellants were present during the occurrence. It is also submitted that *parcha* (revenue receipt) as issued by the State Government stood in his favour regarding Khata No.4, Khesra No.398 and as such, the claim of informant regarding the aforesaid piece of land is unfounded.

11. It is further submitted by learned counsel appearing for appellants that informant belongs to 'Khatwe'

caste but, he has put his title as ‘Chaupal’. It is pointed that father of the informant was earlier known with ‘Khatwe’ title, which is apparent from different revenue records as from Khata No.192, Khesra No.185, Mauza-Pachrahi and also of other Khesras of adjoining ancestral lands. It is submitted that caste ‘Khatwe’ was earlier included in Backward Class, which was at Sl. No.25 as per general list of OBC issued by the Government of Bihar, which is Annexure-5, of the present memo of appeal. It is further submitted that caste ‘Khatwe’ was also placed in the category of “Extremely Backward Class” (for short ‘EBC’), which was at Sl. No.19 but, by Government resolution as contained in Memo No.11/17891 dated 28.12.2012 issued under the signature of Joint Secretary, General Administration, Government of Bihar, it was notified that the caste ‘Khatwe’ should be deleted from EBC.

12. Learned counsel further pointed out that till date, the Central Government has not notified ‘Khatwe’ as a caste to be included in the list of the caste notified as Scheduled Caste and Scheduled Tribes and, as such, the

cognizance *qua* appellants under SC/ST Act is unfounded and bad in the eyes of law and, therefore, the learned Special Judge have no jurisdiction to try the present case. It is pointed out that it is the case of changing of title, which does not lead to conclusion *ipso facto* that informant belongs to Scheduled Castes community until and unless his caste is not notified by the Central Government.

13. Mr. Thakur, learned counsel appearing for appellants further submitted that the learned Special Court, which is original court being Special Court, while differing with police report must to assign reason for taking cognizance *qua* appellants and in support of his submission, he relied upon the legal report of Hon'ble Supreme Court as recently observed in the matter of **Suresh Garodia vs. The State of Assam and Another [Criminal Appeal No.185 of 2024 arising out of SLP (Crl.) No.9142 of 2022 dated 09.01.2024]**.

14. It is also pointed out by Mr. Thakur that the witnesses, who made statement regarding involvement of appellants during occurrence are relatives and highly

interested witness, who named appellants out of ulterior and oblique motive due to local political rivalaries. It is submitted that during investigation, different independent witnesses were examined like Sushil Chaupal (in Para-31 of the case diary) has stated that people of both groups assaulted each other and further stated that Dharmendra Kumar Yadav (appellant no.2), Kishuni Yadav (appellant no.4) and Pintu Thakur (appellant no.5), were not present during the occurrence. It is submitted by him that Mishri Lal Yadav (appellant no.3) was present at village-Bharatpur during alleged occurrence, which is at the distance of 6 km from the place of occurrence and similarly Dheeraj Kumar Yadav (appellant no.1) was also not present and it was he only, who informed the Officer-in-charge of Raiyam Police Station regarding occurrence. It is pointed out that CDR and location of mobiles of appellants were verified, which approved the facts regarding their presence at different places during time and date of occurrence.

15. It is also pointed out that people of both groups received injuries but, no injuries were found upon the

appellants, which further suggest that they were not present during the occurrence. It is also pointed out that as per para-73 of the case diary, Pintu Thakur (appellant no.5) was not present at the place of occurrence and was attending '*yagya*' and he was named only being the supporter of Mishri Lal Yadav (appellant no.3). It is submitted that in aforesaid background of the facts regarding *alibi* of appellants, which surfaced during the course of investigation, after examining the electronic evidence, the Investigating Officer of this case submitted final form against the appellants and not sent up them for facing trial. It is also submitted that in counter case as lodged by co-accused Bishwanath Sah i.e. Raiyam P.S. Case No.9 of 2013, after investigation, the police submitted final form also against some of the accused persons, who were not received injuries during the occurrence.

16. As far framing of charge against the appellants are concerned, it is submitted by Mr. Thakur that as per catena of judgments of Hon'ble Supreme Court strong suspicion needs to be present against accused persons while framing charges, which is completely lacking in the present

case. It is further pointed out that the issue raised by accused persons while hearing the discharge petition must be answered by the trial court and in support of his aforesaid submission, learned counsel referred to the judgment of Hon'ble Supreme Court as reported in the matter of **Kanchan Kumar vs. State of Bihar [(2022) 9 SCC 577].**

17. It is also submitted by learned counsel appearing for the appellants that in present case SC/ST Act is not applicable for the reason that the basis of occurrence is land dispute and not the atrocities as defined within the meaning of the SC/ST Act. In support of his submission, learned counsel relied upon the legal report of Hon'ble Supreme Court as reported in the matter of **Hitesh Verma vs. State of Uttrakhand [AIR 2020 SC 558]** and also upon legal report of Hon'ble Apex Court as reported in the matter of **Gulam Mustafa vs. State of Karnataka & Ors. [2023 SCC Online SC 603]**.

18. Arguing further on this point, learned counsel submitted that the caste of informant i.e. 'Khatwe' is still to

be notified under Scheduled Caste category and, as such, the prosecution under SC/ST Act is bad in the eyes of law. It is submitted that the Central Government has already notified 'Khatwe' as Backward Class for State of Bihar and the Central Government refused to accord approval for deleting 'Khatwe' from BC category. It is also pointed out that caste 'Chaupal' has been identified as a separate caste from 'Khatwe', which comes under SC category for State of Bihar as categorized by the Union Government. It is submitted that under the Constitution of India, the State Government has no power/jurisdiction to add any caste or sub-caste under SC/ST category. Therefore, until and unless there is no notification by Central Government, declaring 'Khatwe' as scheduled caste for State of Bihar, any such order passed by the State Government is void *ab initio.*

19. *Per contra,* Ms. Archana Shahi, learned counsel appearing for informant submitted that the allegation made in the FIR was supported by five injured eye-witness of the occurrence with specific allegation against the appellants as to assault by deadly weapons as to cause

bodily injuries and by taking note of said fact, the learned Special Court/Trial Court took cognizance by differing with police finding. It is submitted that merely on the ground as police found no movement of tower locations of mobile No.9431819191, which belongs to appellant no.3, it came to conclusion that the appellants were not present at the place of occurrence. It is submitted that this is highly suspicious question of fact and can only be adjudicated during trial. It is also submitted that admittedly cross case regarding same set of occurrence was filed by one of the injured accused namely, Bishwanath Sah, which has been registered as Raiyam P.S. Case No.9 of 2013 subsequent to this case. Therefore, the occurrence is admitted. It is pointed out that at the stage of cognizance what is required under the law is availability of such materials, which may be sufficient to bring criminal law into motion against accused persons and same not required of such standard, which must likely to convict or acquittal of accused persons. It is pointed out that the Court is not required to evaluate the evidence and its merits at the stage of taking cognizance. In support of same,

the learned counsel relied upon the legal report of Hon'ble Supreme Court as reported in the matter of **State of Gujarat vs. Afroz Mohammed Hasanfatta [AIR 2019 SC 2499]** and also on **State of West Bengal and Anr. vs. Mohammad Khalid and Anr. [(1995) 1 SCC 684]**.

20. As far taking cognizance for the offences under SC/ ST (POA) Act, 2015, it is pointed out that 'Chaupal' caste had been identified as 'Khatwe' by report of Mungeri Lal Commission constituted by the Government of Bihar in the year 1971 and report of said commission was implemented by the Government of Bihar. It has also been omitted from the schedule of EBC since 28.12.2012 and a resolution was issued by State Government to the effect that 'Khatwe' is declared with title/surname of 'Chaupal' and also wherever 'Khatwe' is denoted on the government or non-government revenue record or other records, same to be read as 'Chaupal' and also to the effect that caste certificate to 'Khatwe' be issued in the name of scheduled caste as 'Chaupal'. It is submitted that this fact is not only with regard to informant but, all persons of Bihar, who was

initially titled as 'Khatwe'. In view of same, it is submitted that the status of informant as scheduled caste cannot be disputed.

21. Learned counsel further submitted that the informant of this case was abused publicly and appellant no.3 specifically spitted publicly on his wife, which is sufficient to bring a case *prima facie* under SC/ST (POA) Act, 2015.

22. Ms. Shahi, learned counsel appearing for informant submitted that the appellants have not challenged the rejection of their discharge petition under Section 227 of the Code of Criminal Procedure (for short 'CrPC') as filed before learned Trial Court, rather they are challenging the order when charges have already framed against the appellants under Section 228 of the CrPC. It is submitted that the non-challenging of order passing rejection of discharge petition and to challenge the order when charges have already framed against the appellants under Section 228 of the CrPC simplicity, suggest on its face that appellants were not aggrieved by the rejection of the order

of discharge petition by the learned trial court, which was passed by considering the available materials, being satisfied that there is grave suspicion *prima facie* as to frame the charges against the appellants. In support of his submission, learned counsel relied upon legal report of Hon'ble Supreme Court as reported in the matter of **State of Gujarat vs. Dilip Sinh Kishoresinh Rao** decided through Criminal Appeal No.2504 of 2023 dated 09.10.2023.

23. It is also pointed out that at the stage of framing of charge, inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. In support of his submission, learned counsel has referred to the legal report of Hon'ble Supreme Court as reported in the matter of **Sheoraj Singh Ahlawat and Ors. vs. State of Uttar Pradesh and Anr. [(2013) 11 SCC 476]**.

24. I have perused the materials available on record and taking note of the arguments as advanced by learned counsel appearing on behalf of the parties.

25. From perusal of record, it appears that

appellants have challenged two different orders of the trial court through present criminal appeal; first is the order of cognizance dated 24.05.2019 for the offences under Sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504, 506 of the IPC and Section 3(1)(r)s) of the SC and ST Act and secondly, the order of framing of charge dated 15.09.2022 under Section 228 of the CrPC.

26. It is made clear that the discharge petition as rejected by the learned trial court under Section 227 of the CrPC was not challenged by the appellants.

27. It would be appropriate to reproduce the order taking cognizance dated 24.05.2019 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Darbhanga, which is as under:-

> "Court of Special Judge (SC/ST POA ACT) Darbhanga
>
> **G.R.Case No.13/17**
>
> (Arising out of Raiyam P.S. Case No.08/17)
>
> **24-05-2019** Record put up. Heard learned Special P.P. on cognizance matter.
>
> Perused the record. It appears that the I.O. of the case submitted supplementary charge-sheet along with case diary for offences punishable under sections 147, 148, 149, 447, 448, 341, 323, 324, 307 and 354, 406 447 of the IPC and section 3(1) (r) (s) Act against the

FIR named accused persons 1. Parikchhan Mandal, 2.Ram Narain Mandal, 3. Vishwanath Sah, 4. Suresh Mandal, 5. Ram Bilas Mandal, 6. Shobhi Mandal, 7. Hare Mandal, 8. Sukesh Mandai, 9. Pawan Mandal, 10. Shankar Mandal, 11. Lalit Sah. 12. Sujit Sah and 13. Raghunath Thakur showing other FIR named accused namely 1. Mishri Yadav, 2. Kishuni Yadav, 3. Dharmendra Yadav, 4. Dheeraj Yadav, 5. Pintu Thakur not sent up for trial.

From perusal of FIR, charge sheet, case diary and also relevant materials available on the record it appears witnesses during investigation, particularly namely Satto Chaupal, Saroj Chaupal supported involvement of all the FIR named accused persons including not sent up accused in alleged offence. As such paras- prima facie case for offence under sections 147, 148, 149, 447, 448, 341, 323, 354B, 386, 427, 504, 506 of the IPC and section 3(1) (r) (s) Act is made out against all the eighteen FIR named accused persons referred above. Accordingly, cognizance under sections 147, 148, 149, 447, 448, 341, 323, 354B, 386, 427, 504, 506 of the IPC and section 3(1) (r) (s) Act is taken against the aforesaid accused persons. Issue summons against accused person.

Put up on 31-7-2019 awaiting appearance of accused person.

(Dictated)
Special Judge,
Darbhanga
23-05-2019”

28. It would be apposite to reproduce para-8 and 9 of the legal report of Hon’ble Supreme Court as passed in

the matter of **Sonu Gupta v. Deepak Gupta [(2015) 3 SCC 424]**, which runs as under:-

> ***"8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.***
>
> ***9. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek***

discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

29. It would be apposite to reproduce the answer given by the Hon'ble Supreme Court in the matter of **State of Maharashtra and Ors. vs. Som Nath Thapa and Ors. [(1996) 4 SCC 659],** that when can a charge be framed?

30. In this context, it would be apposite to reproduce the finding of Hon'ble Apex Court through relevant paragraphs hereinbelow for better understanding of the position of law that when a charge can be framed, which are as under:-

> ***"26. Shri Ram Jethmalani has urged that despite some variation in the language of the three pairs of sections, which deal with the question of framing of charge or discharge, being relatable to either a sessions trial or trial of a warrant case or a summons case, ultimately converge to a single conclusion, namely, that a prima facie case must be made out before a charge can be framed. This is what was stated by a two-Judge Bench in R.S. Nayak v. A.R. Antulay [(1986) 2 SCC 716] .***
>
> ***7. Let us note the three pairs of sections Shri Jethmalani has in mind. These are Sections 227 and 228 insofar as sessions trial is concerned; Sections 239 and 240 relatable to trial of warrant cases; and Sections 245(1) and (2) qua trial of summons cases. They read as below:***
>
> ***"227. Discharge.—If, upon consideration of the record of the case and the documents submitted therein, and after***

hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence

charged or claims to be tried.

239. When accused shall be discharged.—If, upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

245. When accused shall be discharged.—

If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

28. Before adverting to what was stated in Antulay case [(1986) 2 SCC 716 : 1986 SCC (Cri) 256] let the view expressed in State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404 : (1977) 3 SCR 113] be noted. Therein, Chandrachud, J. (as he then was) speaking for a three-Judge Bench stated (at SCR p. 119 : SCC p. 704) that at the stage of framing the charge the court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.

29. What was stated in this regard in Stree Atyachar Virodhi Parishad case [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715 : 1989 SCC (Cri) 285] which was quoted with approval in paragraph 78 of State of W.B. v. Mohd. Khalid [(1995) 1 SCC 684 : 1995 SCC (Cri) 226] is that what the court has to see, while considering the question of framing the charge, is whether the material brought on record would reasonably connect the accused with the crime. No more is required to be inquired into.

30. In Antulay case [(1986) 2 SCC 716] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a

prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion

is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

31. It is further relevant to reproduce paragraph-13 of legal report of Hon'ble Supreme Court in the matter of ***Vesa Holdings Private Limited v. State of Kerala [(2015) 8 SCC 293], it was held that:—***

"It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not

be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."

32. It would be further apposite to mention the judicial precedents as to under which circumstances the powers under Section 482 of the CrPC be exercised by the High Court.

33. In this context, it would be relevant to reproduce paragraphs-102 and 103 of the legal report of Hon'ble Supreme Court as passed in the matter of **State of Haryana vs. Bhajan Lal [1992 Supp (1) SCC 335],** which runs as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and

of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the

Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or

where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

34. It would further be apposite to reproduce paragraph-34 of the legal report of Hon'ble Supreme Court as passed in the matter of **Gulam Mustafa vs. State of Karnataka and Anr. [2023 SCC OnLine SC 603],** which

runs as under:-

> ***"34. Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a 3-Judge Bench of this Court, in Ramawatar v. State of Madhya Pradesh, 2021 SCC OnLine SC 966, has held that the mere fact that the offence is covered under a 'special statute' would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below:-***
>
> > ***"15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the***

SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this

Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."

35. It would be apposite to reproduce para 13 and 14 of the legal report of Hon'ble Supreme Court as passed in the matter of **Hitesh Verma case** (supra) as under :-

"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 Tribes. All insults or intimidation 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 ingredients, 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 available 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 vs. State [(2008) 8 SCC 435]. The Court had drawn distinction between 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 a 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. The Court held as under:-

"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 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 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."

36. By importing the legal ratio as settled by the Hon'ble Apex Court to the present factual scenario, it appears that the core issue for the occurrence is the land dispute between the parties. It is apparent that for the same set of occurrence, a cross case was also lodged, as Raiyam P.S. Case No.9 of 2017 by the appellants' side. Therefore, the occurrence is an admitted position. It is well settled law that cognizance is taken for an offence and not against the accused. It also well settled law that Magistrate can take a different view that of the charge-sheet, as submitted by police *qua* accused persons, even exonerating and not sent up for trial.

37. From the perusal of cognizance order, it appears that the statement of two injured witnesses, namely, Satto Chaupal and Saroj Chaupal were considered, who supported the involvement of all the FIR named accused persons including the appellants in the occurrence with

specific allegation of assault causing bodily injuries. They have also received serious bodily injuries and on the basis of their statement, cognizance was taken against the appellants by taking a different note *qua* final form, therefore, it cannot be said that a *prima facie* case as to set out a criminal law into motion against the appellants is not made out.

38. This Court does not find force in the submission of learned counsel appearing for the appellants that no reason was assigned while taking cognizance against the appellants by differing with the police report, in view of aforesaid statements of injured/eye witnesses, where appellants are named with FIR, having specific allegation to cause bodily injuries, therefore cognizance for offences *qua* appellants for the offences as alleged under Indian Penal Code cannot be said bad in eyes of law, for the only reason that their mobile phones were found at some other places at the time of occurrence, which is a disputed fact, related with '*alibi*' of appellants, which can be ascertained during the trial only.

39. Therefore, prayer as to quash order of

cognizance and 'framing of charge' dated 24.05.2019 and 15.09.2022 respectively does not have any merit, and same is declined to accept in view of aforesaid factual and legal reasons, as it relates for offences committed under Sections 147, 148, 149, 447, 448, 341, 323, 354-B, 386, 427, 504 and 506 of the IPC.

Cognizance for SC/ST Act:

40. At the outset, it would not be apposite to decide the issue in present case as to whether caste 'Chaupal' is scheduled caste or not, as claimed by the informant and disputed by the appellants, because same is not in lis.

41. However, presuming for a moment that 'Chaupal' is a scheduled caste in terms of State Government Notification dated 28.12.2012, as claimed by the informant, it appears that the allegation was raised in the background of land dispute as to aggravate the allegation. It nowhere appears that the occurrence took place out of atrocities as defined within the meaning of SC and ST Act, 1989, which is admittedly, out of land dispute. It nowhere appears from the

perusal of FIR that the uttering word '*Sala Chaupalwa*' and spitting as alleged was made in public view.

42. Therefore, by taking guiding note of **Gulam Mustafa case** (supra) and also of **Hitesh Verma case** (supra), it appears that the cognizance of the offence as taken vide order dated 24.05.2019 for the offence under Section 3(1)(r)(s) of the SC/ST Act by the learned Special Judge, SC/ST (Prevention of Atrocities) Act, Darbhanga in G.R. Case No.13 of 2017 arising out of Raiyam P.S. Case No.8 of 2017 is bad in the eyes of law and, accordingly, same is herewith quashed and set aside.

43. The present quashing application is allowed in part, in aforesaid terms.

44. Accordingly, the learned Special Court is directed to take appropriate steps in administrative side to transfer this case before appropriate court for its trial and disposal.

45. Pending interlocutory petition, if any, stands disposed of in terms of aforesaid order.

46. Let a copy of the judgment be sent to the

learned trial court forthwith for its compliance.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	30.04.2024
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