

IN THE HIGH COURT OF JUDICATURE AT PATNA

Anil Prasad & Other
vs.
The State of Bihar & Other

CRIMINAL APPEAL (SJ) No.4516 of 2023

30 January 2024

(Hon'ble Mr. Justice Shailendra Singh)

Issue for Consideration

Whether an Order of cognizance taken by learned Trial Court against the appellants of the offences punishable under Sections 147, 148, 149, 323, 307, 337, 504 of the Indian Penal Code, 1860 and under Sections 3(1)(r)(s), 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is correct or not?

Headnotes

Indian Penal Code, 1860—Sections 147, 148, 149, 323, 307, 337, 504—Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989—Sections 3(1)(r)(s), 3(2)(va)—Cognizance—informant/respondent no. 2 made 35 persons as accused in FIR, but no specific allegation was made by the respondent no. 2 against any of them; and the allegation appearing against the appellants is general and omnibus; and an incident of electrocution to a buffalo of the respondent no. 2 took place on account of supply of electricity in a naked electric wire that came in contact with the buffalo; and thereafter, the occurrence as alleged in the FIR took place.

Held: Respondent no. 2 filed his case with malicious intention without revealing any specific role of any of them while regarding the same occurrence the police had earlier lodged a Case that was found true and the persons of both the sides were charge-sheeted, hence, the order impugned taking cognizance of the alleged offences set aside and appeal allowed.

(Paras 5-6)**Case Law Cited**

N/A

List of Acts

Indian Penal Code, 1860, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

List of Keywords

Indian Penal Code, 1860, Sections 147, 148, 149, 323, 307, 337, 504, Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 3(1)(r)(s), 3(2)(va), Cognizance, incident of electrocution, FIR.

Case Arising From

An order passed by the Court of learned Additional District and Sessions Judge-1st, Seikhpura in connection with Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022, arising out of SC/ST Case No. 45 of 2022.

Appearances for Parties

For the Appellants: Mr. Jitendra Kumar, Advocate

For the State: Mr. Binay Krishna, APP.

For the Respondent No. 2: Mr. Bipin Kumar, Advocate

Headnotes Prepared by Reporter: Abhas Chandra, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4516 of 2023

Arising Out of P.S.. Case No.-290 Year-2022 Thana- SHEKHPURA District- Sheikhpura

1. Anil Prasad Son of Late Bramdeo Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
2. Pankaj Prasad Son of Raj Kumar Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
3. Sonu Kumar Son of Naresh Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
4. Tinku Prasad Son of Kapildeo Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
5. Pankaj Mahto Son of Ram Chandra Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
6. Nitish Kumar Son of Ram Chandra Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
7. Pawan Mahto Son of Late Umesh Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
8. Sharwanjeet Mahto Son of Late Umesh Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
9. Mantu Ram @ Raju Ram Son of Mishri Ram Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
10. Shubham Kumar Son of Vashist Ram Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
11. Raj Prasad Son of Raghuni Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
12. Kanhaiya Kumar Son of Bhushan Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
13. Nilesh Mahto Son of Dubari Mahto @ Dwrika Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
14. Sanni Kumar Son of Nilesh Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
15. Bobby Kumar Son of Nilesh Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
16. Arbind Kumar Son of Sharwan Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
17. Raju Patel Son of Suresh Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
18. Lala Kumar Son of Damodar Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
19. Virendra Prasad Son of Late Sharan Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
20. Ganauri Mahto @ Uday Prasad Son of Late Mathura Mahto Village-



- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
- 21. Ritesh Kumar Son of Raj Kumar Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 22. Mukesh Kumar Son of Late Krishna Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 23. Anand Kumar Son of Shiv Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 24. Dablu Prasad Son of Shiv Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 25. Vikash Kumar Son of Naresh Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 26. Chandan Kumar Son of Arjun Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 27. Sonu Kumar Son of Bhushan Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 28. Prajapati Prasad Son of Sharan Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 29. Dilkhush Kumar Son of Bhushan Mahto Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 30. Ravi Kumar Son of Vinod Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 31. Sunil Kumar Son of Surendra Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 32. Ashok Kumar Son of Late Krishnanand Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 33. Santosh Kumar Son of Kapildeo Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 34. Shiv Shankar Kumar Son of Suresh Prasad Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura
 - 35. Pankaj Kumar Son of Arvind Prasad @ Jharjhari Village- Jeevanbigha, P.S.- Sheikhpura (KUSUMBHA O.P.), Dist- Sheikhpura

... .. Appellant/s

Versus

- 1. The State of Bihar
- 2. Raja Ram Paswan Son of Late Lakhnan Paswan Village- Jeevanbigha, P.S.- Sheikhpura (Kusumbha O.P)

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Jitendra Kumar, Advocate
For the Respondent no.2	:	Mr. Bipin Kumar, Advocate
For the State	:	Mr. Binay Krishna, APP

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

5 30-01-2024

1. Heard the parties.

2. The instant appeal has been filed against the order dated 11.08.2023 passed by the Court of learned Additional District and Sessions Judge-1st, Sheikhpura in connection with Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022, arising out of SC/ST Case No. 45 of 2022, whereby and whereunder the learned trial court has taken cognizance against the appellants of the offences punishable under Sections 147, 148, 149, 323, 307, 337, 504 of the Indian Penal Code and under Sections 3(1)(r)(s), 3(2)(va) of SC/ST Act.

3. Mr. Jitendra Kumar, learned counsel appearing for the appellants submits that the allegation levelled by the respondent no.2 in the FIR of Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022 is completely false and the police, after completion of investigation, submitted final report with this conclusion that the case of respondent no.2 was false and the copy of the final form report dated 31.01.2023 has been filed as Annexure-P/2. It is further submitted that for the same occurrence the police concerned had already lodged an FIR vide Sheikhpura (Kusumbha O.P.) P.S. Case No. 287 of 2022, in which persons of both the sides were made accused and thereafter, with an intention to harass the appellants, the



respondent no.2 lodged the FIR of Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022 and after the investigation in Sheikhpura (Kusumbha O.P.) P.S. Case No. 287 of 2022, police chargesheeted the persons of both the sides and in this regard, police report concerned to said P.S. Case may be perused.

4. On the contrary, learned APP appearing for the State as well as learned counsel appearing for the respondent no.2 has vehemently opposed the appeal and submitted that the order impugned taking cognizance of the alleged offences has been rightly passed as there is sufficient material in the case diary of Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022 to prima facie attract the alleged offences.

5. Heard both the sides and perused the order impugned and other relevant materials. In the FIR of Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022, the informant/respondent no.2 made 35 persons as accused, who were named by him but no any specific allegation was made by the respondent no.2 against any of them and the allegation appearing against the appellants is general and omnibus and an incident of electrocution to a buffalo of the respondent no.2 took place on account of supply of electricity in a naked electric wire that came in contact with the said buffalo and thereafter the occurrence as alleged in the FIR took place. After investigation,



the police found the allegations levelled in the FIR to be false and with the said conclusion, submitted police report before the court concerned. As per the FIR several persons are said to have sustained injury in the alleged occurrence but it has been argued by learned counsel for the appellants that before the investigating officer no injury report of the said injured persons was produced. The most important thing is that before lodging of the FIR by respondent no.2, an Assistant Sub-Inspector, Kapil Prasad, posted at Kusumbha O.P. had lodged Sheikhpura (Kusumbha O.P.) P.S. Case No. 287 of 2022 against the several persons belonging to appellants' side and also respondent no.2's side and as per allegation levelled in the said FIR, persons of both the parties assaulted each other by means of *lathi-danda* etc. and thereafter police reached at the place of occurrence and found them committing the alleged occurrence of *marpit* by throwing bricks and stones against each other and some of them fired at the opposite party and some of them sustained injuries in the alleged occurrence. The allegations levelled in the Sheikhpura (Kusumbha O.P.) P.S. Case No. 287 of 2022 were investigated by the police officer concerned and finding substance in the said allegations the police submitted chargesheet against the several accused belonging to the appellants' side as well as respondent no.2's side. Admittedly,



Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022 was lodged after institution of Sheikhpura (Kusumbha O.P.) P.S. Case No. 287 of 2022 and if we take the incidents, described in both the FIRs, into account, it is clearly evident that the Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022 was lodged with a malicious intention by the respondent no.2 and furthermore, respondent no.2 named several persons as accused in his FIR without revealing their specific role in the commission of the alleged occurrence. Furthermore, during investigation in connection with Sheikhpura (Kusumbha O.P.) P.S. Case No. 290 of 2022, independent witnesses did not support the allegation levelled by the respondent no.2 and the police concluded that an incident of electrocution to a buffalo of respondent no.2 led to commission of a free fight among both the parties and the respondent no.2 filed his case at the instigation of a chaukidar.

6. Considering all the circumstances appearing in the light of the above discussed facts, this court forms the opinion that the respondent no.2 filed his case with malicious intention levelling a general and omnibus allegation against several persons without revealing any specific role of any of them while regarding the same occurrence the police had earlier lodged Sheikhpura (Kusumbha O.P.) P.S. Case No. 287 of 2022



that was found true and the persons of both the sides were chargesheeted, hence, the order impugned taking cognizance of the alleged offences against the appellants does not appear to be proper and the same appears to have been passed in mechanical manner and if the appellants are put on trial for the alleged offences, it will cause an irreparable loss and agony to them. As such, the order impugned is hereby set aside and the instant appeal stands allowed.

(Shailendra Singh, J)

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