

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.343 of 2022**

Arising Out of PS. Case No.-3427 Year-2010 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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Md Amir Hussain S/o Abdul Khalique Resident of Village- Blshanpur, P.S.-
Korha, District- Katihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sharwan Kumar Rishi S/o Ballu Rishi Resident of Village- Bandh Tola, P.S.-
Kohra, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Md. Helal Ahmad, Advocate
For the State : Mr.Sadanand Paswan, Spl. P.P.

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 01-09-2025

Heard learned counsel for the petitioner and
learned Spl. P.P.

2. Despite valid service of notice, none has
appeared on behalf of opposite party no. 2.

3. The instant criminal revision petition has been
filed by the petitioner for setting aside the judgment and order
of conviction, both dated 08.03.2022 passed by learned 1st
Additional Sessions Judge -cum- Special Judge, Katihar in
Complaint Case No. 3427 of 2010, CIS No. 3427 of 2010,
whereby and whereunder the petitioner has been convicted for
the offence punishable under Section 323 of the Indian Penal



Code and acquitted from other charges and the petitioner was released after due admonition under the provisions of Section 3 of the Probation of Offenders Act, 1958.

4. Learned counsel for the petitioner submits that the petitioner faced the trial arising out of Complaint Case No. 3427 of 2010 wherein the petitioner was made accused along with four other co-accused persons for the offences punishable under Section 323 of the Indian Penal Code and Sections 3(1)(ii)(x)(xiv) of the SC/ST (Prevention of Atrocities) Act. Learned counsel further submits that the allegation against the petitioner and other co-accused persons is that they abused the complainant by taking his caste name and also assaulted him. There are two dates of occurrence, 02.12.2010 and 11.12.2010, respectively. In the first occurrence, the complainant has named Rafique Alam @ Kalu and Mustaque Alam, who abused the complainant and put him down on the earth and started pressing his neck. This occurrence took place on 02.12.2010. There was no mention of the name of the petitioner for abusing the complainant or for assaulting him. In the second alleged occurrence dated 11.12.2010, the complainant made averment that while a panchayati was being held, the complainant and other persons were assaulted by the petitioner and other co-



accused persons. But the learned trial court disbelieved the second occurrence as is apparent from the impugned judgment but convicted the accused persons for the offence under Section 323 of the Indian Penal Code only. But the said finding is perverse since the complainant did not name the petitioner for being involved in the occurrence of assault dated 02.12.2010 either in his complaint petition or in his deposition. Learned counsel further submits that the learned trial court has disbelieved the story of commission of offence under Sections 3(1)(ii)(x)(xiv) of the SC/ST (Prevention of Atrocities) Act. Further, the evidence of the two witnesses is against the version of the complainant and the same could not be relied on for convicting the petitioner under Section 323 of the Indian Penal Code. There is no further corroborative evidence rather these witnesses are not eye witnesses and from perusal of their evidence it would appear that they are tutored witnesses of the employer of the complainant. Learned counsel further submits that even from the evidence of the witnesses of the complainant, it has come on record that the petitioner was only involved in 'panchayati' for bringing out an amicable settlement. Since the learned trial court disbelieved the story of assault during 'panchayati', nothing remained in the matter against the



petitioner and considering the facts and circumstances, it is apparent that the impugned judgment of the learned 1st Additional Sessions Judge suffers from infirmity and the same could not be sustained against the petitioner.

5. Learned Spl. P.P. vehemently opposes the submission made on behalf of the petitioner. Learned Spl. P.P. submits that once the complainant witnesses named the petitioner for being involved in the assault of the complainant, this Court should not enter into the factual discussion taking a different view from the learned trial court.

6. I have given my thoughtful consideration to the rival submission of the parties and perused the record. For bringing a conviction, in a complaint case, it is settled proposition of law that the averment made in the complaint petition and the evidence of the complainant witnesses are to be read together. However, it is the evidence which would prove the case against the accused persons. Though the complaint petition is not expected to be encyclopedic in nature, not mentioning the name of the petitioner in the complaint petition and the complainant himself not naming the petitioner for any assault upon him, throws the whole issue open. Though this Court is not expected to go into the contentious issues and re-



appreciation of the facts and evidence, still complete absence of the name of the petitioner in the complaint petition for participating in the occurrence dated 02.12.2010 and subsequent omission of the name of the petitioner in the evidence of the complainant, who deposed as C.W. 3, this Court is inclined to entertain the criminal revision petition as perversity is apparent on the face of record. Hence, the judgment and the order of conviction dated 08.03.2022 passed by learned 1st Additional Sessions Judge -cum- Special Judge, Katihar in Complaint Case No. 3427 of 2010 are set aside as against the petitioner.

7. Accordingly, the present criminal revision petition stands allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
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