

(2021) 09 PAT CK 0015

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 500 Of 2021

Pradeep Tamoli

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 03-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 147, 149, 307, 323, 325, 341, 379, 504

Code Of Criminal Procedure, 1973 — Section 438

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(r)(s), 3(2)(va), 8(c), 18

Citation : (2021) 09 PAT CK 0015

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Dr. Anjani Prasad Singh, Sadanand Paswan

Final Decision : Dismissed

Judgement

1. The matter has been heard via video conferencing.
2. Heard Dr. Anjani Prasad Singh, learned counsel for the appellants and Mr. Sadanand Paswan, learned Special Public Prosecutor (hereinafter referred to as the 'Special PP') for the State.
3. The present appeal is directed against the order dated 20.10.2020 passed by the learned Additional Sessions Judge 1st, Sheikhpura, in ABP No. 417 of 2020 arising out of Barbiga (Mission OP) PS Case No. 210 of 2020.
4. The appellants apprehend arrest in connection with Barbiga (Mission OP) PS Case No. 210 of 2020 dated 02.09.2020, instituted under Sections 147, 149, 341, 323, 325, 307, 379, 504 of the Indian Penal Code and 3(1)(r)(s)/3(2)(va) of the Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act').
5. The allegation against the appellants and others is of entering into the shop of the informant and abusing him by caste name and further, against the female

accused persons, of assaulting the mother and sister-in-law (Bhabhi) of the informant and against appellant no. 3, that he took away Rs. 80,000/- cash.

6. Learned counsel for the appellants submitted they have been falsely implicated in the case and for the same incident, appellant no. 1 has lodged Barbiga (Mission OP) PS Case No. 209 of 2020. It was submitted that the appellants are innocent and have not committed any offence. Learned counsel submitted that all the family members have been implicated due to local dispute as has been narrated in the FIR filed by the petitioner no. 1 against the informant's side for the same incident. It was further submitted that the appellants have no other criminal antecedent.

7. Learned Special PP submitted that the appeal is not maintainable due to bar of section 18 of the Act as offence is made out from the plain reading of the FIR. It was submitted that the allegation is of assault on the informant and his family members by the appellants and Section 3(2)(va) of the Act stipulates that whoever commits an offence specified in the Schedule of the Act, against a person and property, knowing that such person is a member of Scheduled Caste and Scheduled Tribe or such property belongs to such member, shall be punishable with such punishment as specified under the Indian Penal Code (45 of 1860) for such offences and shall also be liable to fine. Learned Special PP submitted that Section 8(c) of the Act stipulates that if it is proved that the accused had personal knowledge of the victim or his family, the Court shall presume that the accused was aware of the caste or tribal identity of the victim, unless the contrary is proved. It was submitted that in the present case, the caste identity of the informant's side was well known to the petitioner and, thus, the ingredients of offence under the Act are satisfied, at least, from the plain reading of the FIR and this would suffice for coming into play of Section 18 of the Act, which is a bar to filing any petition under Section 438 of the Code of Criminal Procedure, 1973.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned Special PP. From a plain reading of the FIR, there being allegation against the appellants entering into the shop and assaulting the informant and his other family members as also taking away of cash, in view of Section 8(c) of the Act there being presumption that the accused were aware of the caste identity of the victim, prima facie, offence is made out under the Act against the appellants.

9. For reasons aforesaid, the appeal stands dismissed as not maintainable.

10. However, in view of submission of learned counsel for the appellants, it is observed that if the appellants appear before the Court below and pray for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.