

**(2016) 03 JH CK 0071**

**In the Jharkhand High Court**

**Case No : Cri. Misc. Petition No. 375 of 2011**

Sahadeo Ram Bhadani and Others

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

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**Date of Decision : 11-03-2016**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 323, 341, 504  
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3, 4

**Citation : (2016) 3 ECRC 301 : (2016) 3 JBCJ 98 : (2016) 4 JLJR 481**

**Hon'ble Judges : Rongon Mukhopadhyay, J.**

**Bench : Single Bench**

**Advocate : Mr. Rajesh Kumar, Advocate, for the Appellant; Mr. Sumeet Gadodia, Advocate, for the Respondent**

**Final Decision : Disposed Off**

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## **Judgement**

Rongon Mukhopadhyay, J.—; Heard Mr. Rajesh Kumar learned counsel for the petitioners and Mr. Sumeet Gadodia, learned counsel for the opposite party no. 2.

2. Initially, the petitioners in this application had challenged the order dated 20.1.2011 passed by the 1st Additional Sessions Judge, Giridih in Criminal Revision No. 43 of 2010 by which the revision application preferred by the opposite party no. 2 has been allowed and the order dated 24.02.2010 passed by the learned Judicial Magistrate 1st class, Giridih in Complaint Case No. 908 of 2009 by which summons were not issued to the petitioner under Section 3 and 4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act and only summons were issued against the petitioner no. 1 for the offence punishable under Sections 341, 323 & 504 of I.P.C. was set aside. By way of amendment which was allowed by this Court, in I.A (Cr.) No. 5322 of 2013 vide order dated 27.02.2015, challenge has also been made to the orders dated 17.02.2012 passed in Criminal Revision No. 62 of 2011 by the learned District and Sessions

Judge II, Giridih as well as the subsequent order passed by the learned Chief Judicial Magistrate, Giridih on 03.07.2013 in which a prima-facie case was also found under Section 3 (X) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

3. A complaint case was instituted by the opposite party no. 2 against the petitioners in which it was alleged that in the earthen pot which was carried out by the complainant fell down as the complainant has become disbalanced and accidentally some drops of water had fallen upon the accused persons. Allegations have been levelled that the complainant was assaulted and abused in the name of his caste. Further allegation has been levelled that threatening were also given to the complainant. On the basis of the aforesaid allegations C.P Case No. 908 of 2009 was instituted against the petitioners.

4. Upon conducting an inquiry under Section 202 of Cr.P.C. cognizance was taken vide order dated 24.02.2010 for the offences punishable under Sections 341, 323 and 504 of the I.P.C. and summons were issued against the petitioner no. 1 for his appearance.

5. Being aggrieved by the order dated 24.02.2010 passed by the learned Judicial Magistrate, Giridih, a revision was preferred by the complainant being Criminal Revision No. 43 of 2010 which was disposed of vide order dated 20.01.2011 by the learned 1st Additional Sessions Judge, Giridih and the case was remanded back to the learned Judicial Magistrate to hold further inquiry and pass a fresh order since no finding has been given with respect to the offence alleged under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. On remand an order was passed by the learned Judicial Magistrate on 08.06.2011 in which it was held that no case under Section 3/4 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act is made out against the accused persons. However, it was indicated in the said order that so far as the offence under Sections 323, 341 & 504 of I.P.C. is concerned, offence with respect to the same are made out against all the accused persons. Since the grievance of the complainant with respect to not taking cognizance under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act was not redressed according to him, as such he preferred another revision being Criminal Revision No. 62 of 2011 which was disposed of vide order dated 17.02.2012 in which the prayer of the complainant was partly allowed and partly rejected. Pursuant to the order passed in Criminal Revision No. 62 of 2011, the learned Chief Judicial Magistrate, Giridih vide order dated 03.07.2013 has prima facie found an offence committed by the petitioners under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

6. Mr. Rajesh Kumar, learned counsel for the petitioners has submitted that the order dated 17.02.2012 is not in accordance with law as the petitioners were never noticed and they did not get the opportunity to be heard before passing an order on the prayer made by the complainant. It has been submitted that since the learned Judicial Magistrate did not find out prima facie case under the

provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act and since the complainant has preferred a revision against such order, it was incumbent upon the learned Revisional Court to have noticed the petitioners for their appearance. It has further been submitted that in view of the order having been passed by the learned Revisional Court, learned Chief Judicial Magistrate, Giridih on remand could not have taken cognizance for the offences punishable under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, and therefore, the revisional order dated 17.02.2012 as well as the subsequent order passed by the Chief Judicial Magistrate dated 03.07.2013 deserve to be quashed and set aside.

7. Mr. Sumit Gadodia, learned counsel for the opposite party no. 2 submitted that there was no necessity on the part of the Revisional Court to issue notice to the petitioners. It has been submitted that during the pendency of the revision application, the complaint case was dismissed on 19.11.2011 and the Revisional Court has in fact disallowed the prayer made by the complainant with respect to not taking cognizance under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. It has further been submitted that since the learned Magistrate in spite of being aware of the fact that the complainant had filed a revision application, has dismissed the complaint on 19.11.2011 which was considered and allowed by the learned Revisional Court. It has therefore, been submitted that no occasion exists for interfering with either the Revisional Order dated 17.02.2012 or with the subsequent order passed by the Chief Judicial Magistrate, Giridih dated 03.07.2013.

8. The complainant as has been argued by the learned counsel for the respective parties had preferred revision against the order passed on 18.06.2011 by which the learned Judicial Magistrate had held that no offence is made out under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. It appears that although, no notice was issued upon the accused persons, but the learned Revisional Court had considered the fact with respect to dismissal of the complaint on 19.11.2011 for non filing of the requisites. So far as the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act is concerned, it has been held by the learned Revisional Court that the evidence of the complainant cannot be treated as sufficient evidence and in such view of the matter, he had refused to interfere in the order of the learned Magistrate with respect to non issuance of process under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. In such circumstances, therefore the claim of the petitioner that no offence has been committed under the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act has been considered by the Revisional Court which had affirmed the order dated 18.06.2011 passed by the learned Judicial Magistrate.

9. Since the complaint case was dismissed, although the revision application was pending, it was indicated in the Revisional Order that the dismissal of complaint was made without assigning any\* clear cut reasons and without application of

any judicial mind. Therefore, as would appear from the order dated 17.02.2012, the part prayer of the complainant with respect to not taking cognizance under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act has been refused by the Revisional Court while allowing the other part of the prayer with respect to dismissal of the complaint. There was no occasion for the learned Chief Judicial Magistrate, Giridih to subsequently pass the order dated 03.07.2013 by which it was indicated that sufficient materials were on record to proceed against the accused persons under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act and the order of the Revisional Court on 17.02.2012 would suggest that the complaint which was dismissed vide order dated 19.11.2011 got revived and in such circumstances, it was not at all necessary for the Chief Judicial Magistrate, Giridih to pass a fresh order.

10. Accordingly, the order dated 03.07.2013 passed by the learned Chief Judicial Magistrate, Giridih in complaint case no. 908 of 2009 is hereby quashed and set aside. The complaint case shall proceed on the basis of the cognizance which had earlier been taken prior to passing of the order of the Revisional Court dated 17.02.2012.

11. It is made clear that the observations made by the learned Revisional Court in its order dated 17.02.2012 shall not prejudice the contention of the petitioners with respect to the offence which is alleged to be committed by the petitioners under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act.

12. This criminal miscellaneous petition stands disposed of.