

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.474 of 2024**

Arising Out of PS. Case No.-71 Year-2021 Thana- MAGADH UNIVERSITY District- Gaya

ARUN YADAV @ ARUN KUMAR SON OF HARIDWAR YADAV R/O-
CHHOTKI PARARIYA, P.S.-MAGADH UNIVERSITY, DISTT.-GAYA

... ... Appellant

Versus

1. The State of Bihar
2. PRAMENDRA KUMAR SON OF MADHESHWAR PASWAN R/O-
CHHOTKI PARARIYA, P.S.-MAGADH UNIVERSITY, DISTT.-GAYA

... ... Respondents

Appearance :

For the Appellant	:	Mr. Shailesh Kumar, Adv.
For the State	:	Mr. Binay Krishna, Special P.P.
For Respondent no. 2	:	Mr. Munish Kumar, Adv. Ms. Minakshi Kumari, Adv. Mr. Gaurav Kumar, Adv.

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 16-09-2025

Heard both sides.

2. The present appeal is directed against the order dated 18.07.2023 passed by the learned court of Special Judge, SC/ST Court, Gaya in Tr. No. 378 of 2023 arising out of Magadh University P.S. Case No. 71 of 2021 registered under Sections 341, 323, 504/34 of the IPC and Section 3(i)(r)(s) of SC/ST Act whereby and whereunder cognizance for the offences punishable under Sections 341, 323, 504/34 of the IPC and Section 3(i)(r)(s) / 3(2)(va) of the SC/ST Act has been taken against the appellant and two others.

3. The prosecution story, in brief, is that respondent



no. 2/ informant submitted his written statement before the SHO of Magadh University, Bodh Gaya Police Station stating therein that on 05.06.2021 there was Tilak ceremony of son of Vinod Mistry and Vinod Mistry had given invitation to the informant. It is alleged that informant and his family members reached at the house of Vinod Mistry and sat on the table to have feast. Meanwhile, the appellant while abusing the informant and his family members make them got up from the feast. It is further alleged that when same was protested, the informant and his cousin brother, namely, Niraj was abused and assaulted and after that informant and his cousin brother to save the life fled away from there. It is further alleged that appellant along with co-accused Haridwar Yadav and Mantu Yadav came at the house of cousin brother of informant and abused and assaulted the informant and his family members.

4. On the basis of said written statement, Magadh University P.S. Case No. 71 of 2021 has been registered for the offences punishable under Sections 341, 323, 504/34 of the IPC and Section 3(1)(r)(s) of SC/ST Act.

5. Learned counsel for the appellant has submitted that appellant is innocent and has committed no offence as alleged in the F.I.R. The appellant is personnel of Indian Army



and he is not in any way connected with the alleged occurrence as the appellant was posted in Gujarat and for some occasions, he used to visit his native village. He further submits that appellant's family is rival to the winning candidate of Mukhiya and Ward Member and due to said reason, the appellant has been falsely implicated in the present case due to dirty village politics. Learned counsel further submits that there is 5 days delay in lodging the FIR as the alleged occurrence took place on 05.06.2021 and FIR has been lodged on 10.06.2021 and no plausible explanation has been given regarding the said delay. He further submits that there is no eye witness of the alleged occurrence, except the informant and his family members, who are the interested witnesses. Learned counsel further submits that the trial court failed to appreciate that informant has levelled false and bald allegation of abuse but from perusal of the FIR it is clear that no abusive word indicating caste name has been used by the appellant and in the light of the aforesaid facts, no offence is made out against the appellant under the provisions of SC/ST (POA) Act but due to ulterior motive and vested interest, the Investigating Officer submitted charge sheet. Learned counsel further submits that without application of mind, the concerned court accepted the charge sheet in toto and



without having any specific material against the appellant passed order dated 18.07.2023 taking cognizance under Sections 341, 323, 504/34 of the IPC and Section 3(1)(r)(s) / 3(2)(va) of the SC/ST Act against the appellant and others. In the light of aforesaid fact, order passed by the concerned court is not justified and legal and same is fit to be set aside.

6. Learned counsel for the State and learned counsel for the respondent no. 2 submitted that appellant and informant are resident of same village and appellant is well aware of the fact as to which caste the informant and his family members belong to. Allegation has been levelled against the appellant that he abused the informant and his family members and make them got up from the feast. The appellant also used abusive language against the informant's cousin brother. Reason best known to the appellant as to why he is segregating the informant and his family members from others while making them got up from the feast in tilak ceremony. In this way, appellant knowingly gave instruction to the informant and his family members not to have feast in tilak ceremony as they belong to a particular community (Scheduled Caste). Learned counsels further submitted that F.I.R. has been lodged under Sections 341, 323, 504, 34 of the IPC and Section 3(1)(r)(s) of SC/ST Act. Learned counsels



further submitted that in column 11 of the charge sheet name of appellant and others have been mentioned and charge sheet has been submitted against the appellant and others under Sections 341, 323, 504, 34 of IPC and Section 3(1)(r)(s) / 3(2)(va) of the SC/ST Act and the learned trial court has referred re-statement of informant and para 6, 7, 8, 9, 10, 11, 12 of the case diary where concerned court has found that sufficient material is available against the appellant and others and concerned court took cognizance against the appellant and others under Sections 341, 323, 504/34 of IPC and Section 3(1)(r)(s) / 3(2)(va) of the SC/ST Act on the basis of, *prima facie*, material available on record.

7. From perusal of the order dated 18.07.2023 passed by Special Judge, SC/ST Court, Gaya in Tr. No. 378 of 2023 arising out of Magadh University P.S. Case No. 71 of 2021, it appears that same has been passed with due application of mind on the basis of column 11 of the charge-sheet where name of appellant and others have been mentioned and re-statement of informant as well as statement of witnesses recorded in para 6, 7, 8, 9, 10, 11, 12 of the case diary, and after finding a *prima facie* case is made out against the appellant and others on the basis of accusation in the F.I.R.



8. It is necessary to cite decision rendered by the Hon'ble Supreme Court in the case of ***Sonu Gupta vs. Deepak Gupta and Others*** reported in **(2015) 3 SCC 424** in which at para 8 it has been held as follows:-

*'8. 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 a *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 necessary to quote the specific statement of witness, namely, Prince Kumar recorded at para 6 of the case diary which is as follows:-

" हमलोग भोज के पण्डाल में विनोद विश्वकर्मा के न्योता पर पहुंचे तो देखे कि 30-40 व्यक्ति पंगत में बैठे थे। हमलोग भी बैठ गये हम सभी को पत्तल एवं पूँडी सब्जी आदि परोस दिया गया। परन्तु अरुण यादव के द्वारा हम लोग दलित जाति से हैं इस लिए भोज पर से हम लोगों को उठा दिया और हम लोगों से ठेला ठेली करने लगा विरोध करने पर अरुण यादव ने नीरज को मार-पीट किया। "

10. Witnesses, namely, Madheshwar Paswan, Fulwa Devi, Mamta Devi, Kundan Manjhi, Tanu Paswan and Gariban



Paswan at para 7, 8, 9, 10, 11 and 12 of the case diary respectively have supported the version of witness Prince Kumar. These references in case diary reflect that there are sufficient material available on record to take cognizance against the appellant.

11. Considering the facts and circumstances of the case and also that a *prima facie* case has been found against the appellant having regard to the accusations in the First Information Report and the material available on the record, this Court is not inclined to interfere with the impugned order dated 18.07.2023.

12. Accordingly, the present appeal is dismissed at the stage of admission itself.

13. However, if the appellant has any grievance, he may raise his grievance at appropriate stage.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
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