

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 446 of 2024

Qamrul Hoda @ Md. Subhan @ Md. Subahan, , aged about 59 years, son of Late Shams Tabrez, Resident of H. No. 1, Shop Area, Masjid Road, Golmuri, P.O. and P.S. -Golmuri, Town -Jamshedpur, Dist.- East Singhbhum. Appellant

Versus

1. The State of Jharkhand
2. Arun Murmu, son of Late Loso @ Loso Mrumu, resident of Q. No. 4/L-4, Road No. 6, Agrico, P.O. Agrico, P.S. Sidgori, Town Jamshedpur, District -East Singhbhum. Respondents

For the Appellant	: Mr. Rohan Mazumdar , Adv.
For the State	: Ms. Anuradha Sahay , Addl. PP
For the Respondent No. 2	: Ms. Suggi Murmu, , Adv. Md. Zubari Khan, Adv.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This appeal has been filed under Section 14 A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with the prayer to quash and set aside the order dated 28.11.2023 passed by learned Special Judge (SC/ST Act) cases, Jamshedpur in connection with SC/ST case no. 30 of 2023 arising out of Golmuri P.S. case no. 160 of 2019 whereby and whereunder, the learned Special Judge (SC/ST Act), Jamshedpur has found sufficient materials to proceed against the appellants for having committed the offences punishable under Sections 420, 465, 467, 468, 471 and 120B of IPC as well as under Sections 3 (1) (iv) (ix) (x) (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and took cognizance of the said offences though chargesheet was submitted against the appellant only for

the offences punishable under Sections 420, 465, 467, 468, 471 and 120B of IPC.

3. Learned counsel for the appellant relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Usha Chakraborty and Another vs. State of West Bengal and Another** reported in (2023) 15 SCC 135, submit that therein in para 19, it was observed that if the allegations in the complaint petition which was referred to police under Section 156 (3) of the CrPC for registration of the FIR, are vague and are not specific with respect to the alleged offences, it cannot lead to an order for registration of an F.I.R. and investigation on the accusation of commission of the offences alleged.
4. Learned counsel for the appellants next relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Hitesh Verma vs. State of Uttarakhand and Another** reported in (2020) 10 SCC 710 submit that therein in the facts of that case, where the occurrence took place within four walls of the building, it was observed that it cannot be said that such occurrence took place within public view by relying upon its own judgment in the case of **Swaran Singh vs. State** reported in (2008) 8 SCC 435 and further went on to hold that if there is any dispute in respect of possession, is pending before the civil court, the same would not disclose an offence punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 unless the victim is abused, intimidated or harassed only for the reason that she belongs to Scheduled Castes or Scheduled Tribes. It is next submitted that allegations against the appellant are false and learned Special Judge ought not have taken cognizance of the offences in respect of which charge sheet was not submitted i.e. the offences punishable under the penal provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is further submitted that learned Special Judge without application of judicial mind has taken cognizance of the said offences. It is next submitted that informant has already filed

the Original Title Suit no. 23 of 2019 in respect of the land in question, hence it is submitted that the prayer as made in this appeal be allowed.

5. Learned Addl. PP and learned counsel for the respondent no. 2 vehemently oppose the prayer and submits that there is direct and specific allegations against the appellant of committing forgery by making false documents pertaining to ownership of the land belonging to the respondent no. 2 and the said allegations was found to be true by the police during the investigation of the case and they have also committed the offence of cheating and in criminal conspiracy of the co-accused persons have used the forged documents as genuine, hence at this nascent stage, there is no justifiable reason to quash the impugned order dated 28.11.2023 passed by learned Special Judge (SC/ST Act) cases, Jamshedpur in connection with SC/ST case no. 30 of 2023 arising out of Golmuri P.S. case no. 160 of 2019 and this appeal being without any merit be dismissed.
6. Having heard the submissions made at the Bar and after going through materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in (2014) 3 SCC 659, para 15 of which reads as under -

"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed

can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet." (Emphasis supplied)

wherein the Hon'ble Supreme Court of India has categorically laid down the laws that if an investigating authority for any reason, whatsoever, has left all the offences to be included in the charge sheet, on the basis of the FIR, basing upon which, the investigation has been concluded, learned Magistrate before whom the matter comes up for taking cognizance, which principle is also applicable to learned Special Judge, who after submission of the charge sheet, cannot fill the lacunae and the Magistrate or the Special Judge in such a case, which is based on a police report, cannot add or subtract any section of any offence, at the time of taking cognizance, as the same would be permissible to the trial court only at the time of framing of charge.

7. Now coming to the facts of the case, so far as the offences punishable under the penal provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are concerned, the undisputed facts remain that the charge sheet was not submitted in respect of those offences and even if it appeared to the learned special judge that on the basis of materials available in the record, offences punishable under the penal provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is also made out, certainly in view of the principle of law settled in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** (supra), learned Special Judge ought not have taken cognizance of such offences but ought to have waited for the stage of framing of charge and at that time, it could have done so but having taken cognizance of the offences in respect of which charge sheet has not been submitted by police, this Court is of the considered view that the portion of the impugned order in respect of taking cognizance in respect of the penal provisions of the Scheduled Castes and Scheduled Tribes

- (Prevention of Atrocities) Act, 1989, to be specific under Sections 3 (1) (iv) (ix) (x) (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not sustainable in law. Therefore, this court has no hesitation in holding that the cognizance in respect of the said penal provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not sustainable in law but so far as the offences punishable under Sections 420, 465, 467, 468, 471 and 120B of IPC is concerned, as there is direct and specific allegation against the appellant, of having been in criminal conspiracy with the co-accused persons, has committed these offences and the allegations were found to be true during the investigation of the case; there is no illegality. Under such circumstances this Court is of the considered view that the impugned order so far as it relates to the offences punishable under Sections 420, 465, 467, 468, 471 and 120B of IPC, do not suffer from any illegality, the same is maintained.
8. In view of the discussions made above this appeal is allowed in part. The portion of the impugned order by which cognizance in respect of offences punishable under Sections 3 (1) (iv) (ix) (x) (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is set aside but the remaining portion of the said order, in respect of the offences punishable under Sections 420, 465, 467, 468, 471 and 120B of IPC is maintained.
 9. Accordingly, this appeal is allowed in part to the aforesaid extent only and the interim order, if any, passed earlier is vacated.
 10. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 19th March, 2026
Smita / AFR

Uploaded on 28.03.2026