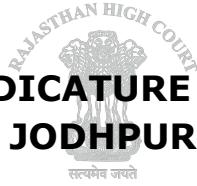




[2024:RJ-JD:42067]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Appeal (Sb) No. 790/2023

Jakir Kha @ Jakir Hussein S/o Kale Kha, Aged About 21 Years, R/
o Chak 3 Kwsn Presently At 2 Kwm Sansardesar Ps Chatargarh
Tehsil Chatargarh Dist. Bikaner

(At Present Lodged In Dist. Jail Hanumangarh)

----Appellant

Versus

1. State Of Rajasthan, Through PP
2. Ravi Kumar S/o Satpal, R/o Sector No. 12 Ward No. 7
Hanumangarh Junction Dist. Hanumangarh Raj.

----Respondents

For Appellant(s) : Mr. Nishant Motsara

For Respondent(s) : Mr. Surendra Bishnoi, PP

HON'BLE MR. JUSTICE BIRENDRA KUMAR**Order****16/10/2024**

1. Heard the parties.
2. This is an appeal under Section 14-A of the SC/ST (Prevention of Atrocities) Act against order dated 04.05.2023 passed by learned Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Hanumangarh in Criminal Miscellaneous Case No.16/2023, whereby the learned Special Judge has framed charges against the appellant for offence under Sections 307/149, 386/149 IPC and Section 3(2)(V) of the SC/ST (Prevention of Atrocities) Act.



3. Respondent No.2 was already served with notice, however, no one appears on his behalf.

4. Heard learned counsel for the appellant as well as learned Public Prosecutor.

5. Contention of the appellant is that a bare perusal of the FIR No.821 dated 10.12.2022 registered with Police Station Hanumangarh Junction, District Hanumangarh, which led to initiation of trial against the appellant would reveal that ingredients of offence under Section 307/149 or of offence under SC/ST (Prevention of Atrocities) Act are prima facie not made out.

6. Learned counsel contends that no other material was collected during investigation to substantiate prima facie case for proceeding with the trial against the appellant.

7. According to FIR, unknown miscreants had demanded ransom from Indra Kumar Hisaria, a businessman. Informant was employee of Mr. Hisaria. On 10.12.2022, the informant was taking tea near a tea-stall and a cleaner was cleaning the business premises of Mr. Hisaria. At the same time, three unknown miscreants came on a motor-cycle and with intent to commit murder of Mr. Hisaria fired at the shop, however, Mr. Hisaria was not there. Firing hit only at the glasses of the gate. The miscreants fled away and an FIR was lodged against unknown.

8. Contention of learned counsel for the appellant is that Mr. Hisaria was not a member of the Schedule Caste/Schedule Tribes, therefore, offence under SC/ST Act would not attract. Moreover, offence under Section 307/149 IPC will also not be attracted in the fact and circumstances of this case as there is no allegation of firing towards any individual. The intention was to



cause fire Arm injury to Mr. Hisaria, who was not there at the time of incident. Firing was not made at the informant, who was taking tea at the tea-stall at some distance from the business shop.

9. Learned counsel for the State submits that at the stage of consideration of framing of charges, meticulous appreciation of evidence is not permissible in law. After investigation, the police has submitted charge-sheet, hence, prima facie material is there against the petitioner.

10. Evidently, offence under SC/ST (Prevention of Atrocities) Act is not made out in the fact and circumstances of this case as neither ransom was demanded from a member of the SC/ST Community nor firing was made at any member of the SC/ST Community. Hence, offence under aforesaid Section is not attracted. As such, learned Trial Judge has framed charges in a mechanical manner without application of judicial mind.

11. Likewise, offence under Section 307 IPC is not made out in the facts and circumstances of this case because it is the prosecution case that firing was made at the shop and hit the glasses and the person who was intended to be assaulted with firearm injury was not there. Firing was not made pointing to any other person including the informant. Therefore, offence under Section 307/149 IPC is also not made out against the appellant.

12. Accordingly, the impugned judgment to the extent of framing of charges under Section 307/149 IPC and under the provisions of SC/ST (Prevention of Atrocities) Act against the appellant stands hereby set aside.

13. The trial may go before the competent court under Section 386 read with 149 IPC.



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[CRLAS-790/2023]

14. Competent court shall re-read the charges against the appellant.

15. The instant Criminal Appeal stands allowed accordingly.

(BIRENDRA KUMAR),J

48-charul/-

