

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30538 of 2015

Arising Out of PS.Case No. -459 Year- 2013 Thana -BHABHUA District- BHABHUA (KAIMUR)

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1. Ajay Singh Son of Hitlal Singh
2. Munna Singh Son of Hitlal Singh null
3. Mintu Singh Son of Hitlal Singh
4. Gulab Singh S/o Late Bachanu Singh
5. Dilip Singh Son of Gulab Singh All r/o Village Kamta, P.S. Bhabhu,
District Kaimur

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Nandan Sahay
Mr. Ravi Shankar Sahay, Adv.
For the Opposite Party/s : Mr. Prabhakar Singh, Adv.
Mr. Ranjay Kumar Patel, Adv.
For the State : :

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

- 3 28-08-2015 **1.** This instant application under Section 482 of the Code of Criminal Procedure has been filed for quashing the Order dated 12.05.2015 passed by learned Sessions Judge, Kaimur at Bhabhua in Sessions Trial No.120/4513 of 2014 by which the learned Sessions Judge has dismissed the application of the petitioners filed under Section 227 and 228 of the Code of Criminal Procedure (for short the 'Code').
- 2.** According to the prosecution case, on 20.09.2013 at about 9 a.m., the petitioners being variously armed with iron rod



and khanti entered into the house of the informant and assaulted his father with intention to kill him, as a result of which he sustained injuries and was being treated at Sadar Hospital, Bhabhua. They also assaulted the informant, Madhusudan Singh. The motive behind the occurrence is said to be an ongoing land dispute between the parties.

3. On the basis of a written report submitted by the informant to the Officer-in-charge, Bhabhua Police Station Case No.459 of 2013 was registered under Sections 341, 323, 307 and 504 read with Section 34 of the Indian Penal Code (For short 'IPC'). On completion of investigation, the police submitted chargesheet vide chargesheet No.463 of 2013 dated 30.09.2013 under Sections 341, 323, 307 and 504 read with 34 of the IPC against the petitioner pursuant to which the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. At the stage of framing of charge, the petitioners filed an application under Sections 227 and 228 of the Criminal Procedure seeking their discharge from the said case.

4. After hearing the parties, learned Sessions Judge, Kaimur at Bhabhua vide his impugned order dated 12.05.2015 dismissed the application filed on behalf of the petitioners and

directed the case to be listed for framing of charge. While dismissing the application, the Court below was of the view that even on strong suspicion, charges can be framed and, therefore, the petition filed on behalf of the petitioners lacked merit.

5. Learned counsel for the petitioners submits that though the allegations made in the FIR may constitute offences under different sections of the Indian Penal Code, the same would not attract the ingredients of the offence punishable under Section 307 of the Indian Penal Code. He submits that from the allegations made in the FIR, it would be evident that there was no intention on the part of the petitioners to kill the informant or his father. Even during course of investigation, none of the witnesses was examined under Section 161 (3) of the Code made any statement before the police alleging the fact that the petitioners ever intended to kill either to informant or his father. He further submits that the injuries sustained by the informant and his father were of simple and superficial in nature.

6. On the other hand, the learned counsel for the State would submit that for attracting an offence under Section 307 of the IPC, injury caused by the accused would be immaterial. The most important aspect of the matter would be whether or not the

accused persons were having intention to kill the informant or his father at the time of occurrence. He would submit that there is allegation that the petitioners forcefully entered into house of the informant and mercilessly assaulted his father with iron rod and khanti, as a result of which he sustained injuries and was admitted in Sadar Hospital.

7. I have perused the allegations made in the FIR as also the materials collected in course of investigation. I have also considered the injuries sustained by the informant and his father. To constitute an offence under Section 307 of the IPC, the intention or knowledge must be such as is necessary to constitute murder. The essential ingredients of the offence under Section 307 IPC are as follows :-

- (1) The accused did some act; and
- (2) Such act was done with intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of murder.

8. The intention, however, has to be inferred from on amongst others, the following facts :-

- (a) the nature of weapon used;
- (b) the place where injuries were inflicted;
- (c) nature of injuries caused; and
- (d) opportunities available to the accused.

9. In the present case, I find that the informant had sustained two superficial injuries caused to him on right foot and lower lip by hard and blunt substance, whereas his father Ram Dwaja Singh had sustained simple and superficial injuries caused to him on his forearms, ankle joint and back by hard and blunt substance.

10. On a careful scrutiny of the facts alleged as also the nature of weapon used, the parts of the body on which the injuries were caused and the nature of injuries caused to the informant and his father, I find that though five accused armed with iron rod and khanti are alleged to have assaulted the informant and his father and there was no intervening circumstance they could cause only simple and superficial injuries and that too on non-vital parts of the body. In my view, under these circumstances, by no stretch of imagination, it can be inferred that the accused intended to kill the informant or his father.

11. Under these circumstances, in my view, the petitioners cannot be charged for the offence punishable under Section 307 of the Indian Penal Code. The learned Sessions Judge may be right in saying that even on strong suspicion, charge can be framed, however, at the stage of framing of charge, the Court is required to

apply its judicial mind so as to decide whether or not there is any ground for presuming the commission of the offence under which charges are going to be framed. I am of the view that in the background of the facts alleged, the learned Sessions Judge ought to have framed charges under other Sections of the IPC but certainly not under Section 307 of the IPC. Since all other offences are triable by Magistrate, he ought to have remanded the matter to the Court of Magistrate in exercise of power conferred under Section 228 (1) of the Code for trial after framing of charges.

12. In view of the discussion made hereinabove, I set aside the impugned order dated 12.05.2015 passed by the learned Sessions Judge, Kaimur at Bhabhua and remit the matter back so that an appropriate order in the light of the observations made hereinabove may be passed.

13. With these observations and direction, the application is disposed of.

Sanjeev/-

(Ashwani Kumar Singh, J)

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