

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48005 of 2012

Arising Out of PS.Case No. -42 Year- 2012 Thana -Madhepur District- MADHEPURA

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1. Amir Prasad Yadav @ Amir Yadav son of Sri Siya Saran Yadav
 2. Pappu Yadav, son of Sri Amir Yadav
 3. Sanjay Yadav, son of Sri Ram Prasad Yadav
 4. Bhola Kumar Yadav @ Bhola Yadav, son of Sri Ram Khelawan Yadav
 5. Guneshwar Yadav, son of Late Dhanushdhari Yadav
- All resident of village- Birpur, P.S.- Madhepur, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. Bhim Yadav son of Sri Ramchandra Yadav, resident of Village- Birpur, P.S.- Madhepur, District- Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukund Mohan Jha, Adv.

For the Opposite Party/s : Mr. B. Ram, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-04-2015

This application under section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 3rd September, 2012 passed by the learned A.C.J.M., Jhanjharpur in G.R. No. 283 of 2012 arising out of Madhepur P.S.Case No. 42 of 2012, whereby, finding that a prima facie case is made out under sections 147, 148, 149, 323, 307 of the Indian Penal Code and 27 of the Arms Act, the petitioners have been summoned to face trial.

One Bhim Yadav had given statement before the Officer-in-Charge of Rosera Police Station in Madhepur Hospital on 8th March, 2012 at about 5.45 p.m. that at about 3.00 p.m. while he



was returning from the brick kiln, he fell down from the motorcycle near his own house. The daughter of petitioner no.1 Amir Yadav was cleaning her utensils at the relevant time. Petitioner no.1 Amir Yadav reached there and abused the informant Bhim Yadav. When the informant protested against this, the petitioners collectively came there and co-accused Niraj Yadav @ Rinku Yadav fired upon the informant from gun 3-4 times, which caused injury in his chest, and thereafter he ran away towards his house. The informant has further alleged that the alleged occurrence took place due to enmity between his uncle, namely, Bihari Yadav and petitioner no.1 Amir Yadav. On the basis of the aforesaid allegations, Madhepur P.S. Case No. 42 of 2012 was registered on 8th March, 2012 under sections 147, 148, 149, 323, 307 of the Indian Penal Code and 27 of the Arms Act. The police investigated the case and finding the allegations to be true, submitted charge sheet against the accused persons named in the F.I.R. including the petitioners. On receipt of police report, the learned Additional Chief Judicial Magistrate, Jhanjharpur took cognizance of the offence.

It has been contended that the injuries found on the person of the informant were all simple in nature and hence no cognizance should have been taken for the offence punishable under section 307 of the Indian Penal Code.

In my view, these issues may be raised by the petitioners at the stage of framing of charges. At that stage, the court concerned would be in a better position to appreciate the materials available on record. In that view of the matter, I am not inclined to interfere with the order of cognizance which has been passed about more than two and a half years back.

Accordingly, the application is disposed of with liberty to the petitioners to raise all the points available to them at the stage of framing of charges.

(Ashwani Kumar Singh, J)

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