

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10366 of 2013

Arising Out of PS.Case No. -119 Year- 2012 Thana -DARBHANGA SADAR District- Darbhanga

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1. Md. Haroon, S/o Late Abbas.
 2. Md. Reyaj, S/o-Md. Haroon.
- Both R/o Dihperai, P.S.-Sadar, District-Darbhangha
- Petitioners.

Versus

1. The State of Bihar.
 2. Md. Sabir, S/o Md. A. Abbas, Resident of Village-Dihberai, P.S.-Sadar, District-Darbhangha.
- Opposite Parties.
- =====

Appearance :

For the Petitioner/s : Mr. Aminuddin Ahmad Kha, Advocate.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 07-05-2015

Heard both the parties.

This application has been filed for quashing the order dated 28.012013 passed by Sessions Judge, Darbhanga in S. Tr. No. 343/2012, whereby and where-under the application of the petitioner filed under Section-228 of Cr. P.C. has been rejected and held that prima facie a case under Section-307 IPC has been made out.

The prosecution case is that the accused persons surrounded the informant and assaulted him with Iron rod, Lathi and Farsa causing injury to the informant and Md. Haroon of lacerated wound on left eyebrow of size 2x2 cm, abrasion over left knee joint size 2x2 cm, pain & swelling over left lower leg size 5x5 cm abrasion over left shoulder joint and the injury found on the person of injured is a lacerated wound size 6x1 cm over the parietal area of head and



swelling over right forearm. The injury on the person of injured has found to be all simple injury caused by hard and blunt substance. However, it is contended that the injuries found by the Doctor are not as such to attract Section 307 of the I.P.C. It has been contended that the weapon used on the part of the body as well as the impact by which the assault has been made. However, it has been stated, though on the person of Md. Sabir the injury has shown to be grievous and on the person of Md. Gulab the injury has been shown on the parietal area but the injury on the vital part has been shown to be simple and though the weapon used alleged to iron rod and sword, but the injury shown to have simple indicates that the weapon by which the injury was made was also not gathered the intention of the accused persons.

However, Trial Court taking into consideration the injury observed that it transpires intention. However, at the stage of framing of charge and consideration by the Court under Section 228 Cr.P.C. the word used under Section 228 Cr.P.C. is that after considering the hearing on the point of charge the learned Judge is of the opinion that there is ground for prosecution and that the accused has committed offence. Hence, it is opinion of the Magistrate which prevail. However, at this stage, it is not proper for this Court to interfere with the opinion given by the Trial Judge, while considering the petition under Section 228 Cr.P.C.

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In view of the facts and circumstances of the case, it is not proper for the High Court to substitute its opinion at this stage as it may cause prejudice to the trial Court and hence it is not proper at this stage under the fact and circumstances to interfere with the order.

However, after going through the material in case diary and report, The trial Court shall consider the material on record at the stage of framing of the charge. However, it is pertinent to mention that matrix to follow at the stage of framing of charge and at trial is different. It is mere the opinion and even on strong suspicion, a charge can be framed. However, a matrix to be adopted at the fag end of the trial, however, strong suspicion is made it cannot take the place of proof. The Court has to appreciate the evidence and the charge has to be proved beyond reasonable doubts on cogent reliable and unimpeachable evidence and the opinion cannot take the place of proof nor can prevail.

Accordingly, this petition is disposed off.

(Gopal Prasad, J.)

Kamlesh/NAFR

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