

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45083 of 2012

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Pashupati Tiwari @ Pashpati Tiwari & Ors

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh

For the Opposite Party/s : Mr. S.M.Rahman (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 16-04-2015 Heard the learned senior counsel, Mr. Bakshi S.R.P. Sinha
on behalf of the petitioners and the learned A.P.P. on behalf of the
State of Bihar.

This application under 482 Cr.P.C. has been filed by the
petitioners for quashing the order dated 10.10.2008 in G.R.
No.948 of 2006 / Tr. No.2873 of 2009 arising out of
Bishambharpur P.S. Case No.20 of 2006 whereby the Court below
took cognizance under Section 147, 308 of the I.P.C.

The learned senior counsel after some argument submitted
that the Court could not have taken cognizance under Section 308
IPC on the basis of supervision note and except the supervision
note, there is no material available in the case diary to show that
offence under Section 308 was made out.

The learned counsel has annexed the injury report with this
criminal Misc. application.

On the other hand, the learned A.P.P. submitted that there is no illegality in the impugned order and the Court below on the basis of the chargesheet has taken cognizance. Therefore, inherent jurisdiction cannot be invoked by the petitioner.

The chargesheet has been annexed as Annexure '2'. From perusal of the chargesheet, it appears that the I.O. found the case to be true under Section 147, 447, 323 I.P.C. and there are several materials for the same but according to the direction of the supervising authority, the supervising authority found the case under Section 308 IPC also and directed the I.O. to file the chargesheet under the said Section. Therefore, the chargesheet was submitted under Section 308 IPC also. From perusal of the order taking cognizance, it appears that the Court below has not taken into consideration this aspect of the matter that the supervising authority directed the I.O. to file chargehseet under Section 308 although the I.O. did not find the case to be true under Section 308 IPC.

It is settled principle of law that the supervisory note is not an evidence in the case and on the basis of the supervision note, cognizance cannot be taken, if there is no evidence. Now, therefore, in view of the chargesheet, there is no material in the case diary in support of the offence said to have been committed

under Section 308 IPC. However, on the basis of the charge sheet and the materials available on record and allegation levelled in the FIR and charge sheet, it cannot be said that no offence at all has been disclosed.

In view of the above settled principle of law that part of the order dated 10.10.2008 whereby cognizance has been taken under Section 308 IPC is quashed. However, the other part of the order whereby cognizance has been taken under Section 147, 447, 323, concerned, the same is confirmed.

In the result, this Cr. Misc. application is allowed in part. The order taking cognizance is modified to the extent indicated above.

(Mungeshwar Sahoo, J)

Sanjeev/-

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