

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25669 of 2015

Arising Out of PS.Case No. -152 Year- 2013 Thana -DARAUNDA District- SIWAN

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1. Md. Sabir, son of Late Sheikh Nazir,
 2. Md. Raja @ Raja
 3. Md. Lal @ Iftekhhar
 4. Md. Rizwan
 5. Md. Lal @ Gulam Sarwar

All from 2 to5 are sons of Sheikh Md. Sabir, all are resident of Village- Semari,
P.S.- M.H. Nagar, District- Siwan.

.... Petitioners

Versus

The State of Bihar

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Udit Narayan Singh, Advocate

For the Opposite Party/s : Ms. Madhuri Lata, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-12-2015

Heard learned counsel for the petitioners and learned
counsel for the State.

2. By way of the present application under Section
482 of the Code of Criminal Procedure (For short “Cr. P.C.”), the
petitioners seek quashing of the order dated 07.05.2015 passed by
the learned 1st Assistant Sessions Judge, Siwan in S. Tr. No.
144/2013 arising out of M.H. Nagar (Daraunda) P.S. Case No.
152/2013 by which the petition dated 16.04.2014 filed under
Section 228 Cr. P.C. has been rejected.



3. The prosecution case, in short, is that on 03.08.2013 while the informant Ayub Khan was going to the house after purchasing certain articles at 3:00 p.m. the petitioners abused him. When he objected, they assaulted him with *lathi*, iron rod and other weapons as a result of which, he sustained injuries on his head, knee and other parts of the body. When his two sons, namely, Md. Adil Khan and Md. Akib Khan intervened in order to save him, they were also assaulted with *lathi* and *danda*.

4. In view of the allegations made in the written report submitted by the informant, Md. Ayub Khan, M.H. Nagar (Daraunda) P.S. Case No. 152/2013 was registered under Sections 147, 148, 149, 323, 307 and 504 of the Indian Penal Code against the petitioners and investigation was taken up. On completion of investigation, the police submitted charge-sheet under Sections 147, 148, 149, 323, 307 and 504 of the Indian Penal Code on 30.09.2013.

5. The learned Chief Judicial Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. At the stage of framing of charge, an application under Section 228 Cr. P.C. was filed on behalf of the petitioners, seeking remand of the case to the court of Magistrate as the ingredients of the offence punishable under Section 307 of the

Indian Penal Code were completely wanting and there was no evidence in the case diary on the basis of which any offence triable by the Court of Sessions could have been made out.

6. The trial court considered the submissions made on behalf of the petitioners and rejected the application vide order dated 07.05.2015. The said order is under challenge before this Court.

7. Learned counsel for the petitioners has submitted that the trial court has failed to appreciate the materials available on record and it has mechanically rejected the application filed on behalf of the petitioners. He has further contended that the injuries sustained by the three injured, namely, Md. Ayub Khan, Md. Adil Khan and Md. Akib Khan are all simple in nature and there is no allegation either in the FIR or in the statement of witnesses recorded under Section 173 Cr. P.C. that the petitioners ever intended to kill the informant or his two sons.

8. *Per contra*, learned counsel for the State has contended that there is allegation that the petitioners assaulted with dangerous weapon on the vital part of the body of the informant and simply because the injuries are simple, it cannot be said that the petitioners did not intend to kill the informant or his two sons.

9. I have heard respective counsel for the parties and

perused the record.

10. I find that while passing the impugned order, the trial court has simply taken into consideration the fact that the petitioners used sharp cut weapon and *lathi* and caused injuries on the vital part of the body of the injured. The trial court has failed to appreciate that to constitute an offence under Section 307 of the Indian Penal Code, the intention or knowledge of the accused must be such as is necessary to constitute murder. Without an intent or knowledge to constitute murder, there can be no offence under Section 307 of the Indian Penal Code. The intention, however, has to be inferred from several facts, they are nature of weapon used, the place where the injuries were inflicted, the nature of injuries caused and opportunity available to the accused for causing murder. In absence of an intention or knowledge of the accused to constitute murder, if the accused voluntarily caused hurt by means of dangerous weapon ingredients of the offence under Section 324 of the IPC would be attracted. Simply because a dangerous weapon has been used and injuries have been caused on the vital part, the offence under Section 307 IPC would not be attracted.

11. I further find that the trial court has not considered as to whether or not there is any material in the case diary on the basis of which it can be concluded that the petitioners

intended to kill the injured persons. In that view of the matter, the impugned order cannot be sustained.

12. Accordingly, the impugned order dated 07.05.2015 passed by the learned 1st Assistant Sessions Judge, Siwan in S. Tr. No. 144/2013 arising out of M.H. Nagar (Daraunda) P.S. Case No. 152/2013 is set aside. The matter is remanded to the learned 1st Assistant Sessions Judge, Siwan to consider the application filed under Section 228 Cr. P.C. afresh and pass appropriate orders in accordance with law.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

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