

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44713 of 2012

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1. Wakil Jha @ Natyanand Jha, Son of Late Jeevnath Jha, resident of Village-Belmohan, P.S. Fulparas, District- Madhubani.
 2. Nirmal Jha, Son of Suresh Jha, resident of Village- Belmohan, P.S. Fulparas, District- Madhubani.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party.

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Appearance :

For the Petitioners : Mr. Birendra Kumar, Advocate.
For the State : Mr. U.L.Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

2 16-04-2015 Heard learned counsel for the petitioners and learned
counsel for the State.

This is an application for quashing the order dated 04.08.2012 passed by the Additional Chief Judicial Magistrate, Jhanjharpur, Madhubani, in Fulparas P.S. Case No. 79 of 2010, G.R. No. 441 of 2010, Trial No. 3075 of 2012 by which cognizance has been taken for offence under Sections 341, 323, 448, 307, 366A and 504 of the Indian Penal Code.

The prosecution case as alleged in the First Information Report by the informant Fekni Devi that on 20.04.2010 at about 1.00 P.M. Wakil Jha and Nirmal Jha came in the courtyard of her house and started abusing due to earlier dispute. When she protested, the co-accused Nirmal Jha took out a pistol and assaulted on her head by butt of the pistol for which blood oozing

out and she fell down. It is further alleged that both the accused persons assaulted her by slaps and fists on which his son Chandu Mishra aged about 15 years came to rescue her, they also assaulted him. It is further alleged on hulla, villagers came and intervened to end their dispute.

Learned counsel for the petitioners submits that the allegation made by the informant even taken to be corrected on the face value, no offence under Section 366A of Indian Penal Code is made out, it has further been contended that offence under Section 307 of Indian Penal Code is also not made out as there is allegation of assault by butt of the pistol on the head of the informant, but there is neither any repetition nor the pistol have been used as fire arm. However, it may be pointed that allegation made may not make out a case for offence under Section 307 or 366A of Indian Penal Code, but it is not a case that the allegation made in complaint taken to be true on face value of it does not make out an offence to take cognizance, however, if allegation made make out an offence then the cognizance taken under wrong Section does not justify quashing the cognizance taken in the case rather that can be look into at subsequent state of framing of charge.

However, under the fact and circumstance, the

petitioners may have liberty to raise issue to proper charge at the stage of framing of the charge. Hence it is directed that trial court shall consider the point raise at the stage of framing of charge.

With this observation, the petition is disposed of.

m.p.

(Gopal Prasad, J)

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