

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12558 of 2013

Arising Out of PS.Case No. -30 Year- 1999 Thana -BIKRAM District- -

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1. Bijendra Yadav, son of Rajendra Yadav, resident of village -
Shahjahanpur, P.S. - Bikram, Distt. - Patna

.... Petitioner/s

Versus

1. State Of Bihar
2. Ashok Kumar Sharma, son of Bhagwat Sharma, resident of village -
Shahjahanpur, P.S. - Bikram, Distt. - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Upendra Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

3 09-07-2015 Heard the learned counsel, Mr. Akhoury Kamal

Kishore Sahay for the petitioner and the learned A.P.P. for the

State.

The petitioner has filed this application under
Section 482 Cr.P.C. for quashing the order dated 05.02.2013
passed by the learned Additional Sessions Judge IV, Danapur in
Sessions Trial No.78 of 2001 arising out of Bikram P.S. Case
No.30 of 1999 whereby the discharge application filed by this
petitioner only has been rejected.

The learned counsel for the petitioner submitted that
according to the allegation made in the F.I.R. itself, the petitioner
was only a member of the mob having a country made rifle with



him and, therefore, no case under Section 307 I.P.C. or any Sections of I.P.C. is made out but cognizance was taken under Section 341, 323, 324, 307, 379/34 I.P.C. The learned counsel further submitted that the court below only on the basis of the fact that three persons were injured has taken cognizance under Section 307 I.P.C. against this petitioner also including the other minor Sections of I.P.C.

On the other hand, the learned A.P.P. objected the prayer.

From perusal of the impugned order and the F.I.R., it appears that there is allegation that this petitioner along with co-accused persons was members of the mob having different types of dangerous weapons in their hands. This petitioner had a country made rifle in his hand. Three persons were assaulted and the medical report has been found that they had received injuries. The question is whether Section 307 I.P.C. is constituted or not and what was the intention of the accused persons is a matter to be seen at the time of hearing only. At this stage, while exercising jurisdiction under Section 482 Cr.P.C. on the basis of this medical report only, it cannot be said that no case under Section 307 I.P.C. is made out. It is settled principle of law that while exercising jurisdiction under Section 482 Cr.P.C., the High Court cannot

embark upon the factual aspect of the matter and give definite finding as that of trial court.

I, therefore, find no merit in this criminal miscellaneous application and thus, it is dismissed.

(Mungeshwar Sahoo, J)

Saurabh/-

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