

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30735 of 2014

Arising Out of PS.Case No. -454 Year- 2012 Thana -MOTIHARI CITY District-
EASTCHAMPARAN(MOTIHARI)

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1. RAJENDRA MALI SON OF LATE GANAUR MALIK
2. SANGITA DEVI WIFE OF VIRENDRA MALI
3. NARESH MALI SON OF RAJENDRA MALI
4. VIRENDRA MALI SON OF BHUAR MALI
ALL R/O VILALGE BEGAMPUR BAILKHANA, P.S. TOWN
MOTIHARI, DISTRICT EAST CHAMPARAN

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Rajesh Kumar, Adv.
For the Opposite Party/s : Mr. Ashraf Ansari(App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 16-09-2016 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor. Gone through the order
impugned dated 05.06.2014 passed by Assistant Sessions
Judge, 1st, East Champaran at Motihari, in Sessions Trial
No.808/2013.

Perception of materials having collected during
course of investigation and been produced before the court in
accordance with Section 173 Cr.P.C. is to be considered at the
stage of framing of charge and during course of appreciation of
those materials, neither roving inquiry nor meticulous



examination have been permitted. However, during course of appreciation of aforesaid material, prima facie or even less than that is to be perceived and further, during conduction of such exercise, the court has also to consider whether the allegation as attributed would justify trial before the court of Session or requires to be remitted back in terms of Section 228(1)(a) of the Cr.P.C. once, the allegation on consideration suggests that the offences whatever been coming out therefrom would not attract the trial by the court of Session, then thereafter the matter would be referred in terms of Section 228(1)(a) Cr.P.C., otherwise will be proceeded with in terms of Section 228(1)(b) Cr.P.C.

Certainly, as observed by the learned lower court *Chura* blow was given but, during course thereof, there happens to be absence of the material that such activity at the end of the accused was with an intention or knowledge to commit murder. If, the aforesaid ingredients is found lacking on its face, then in that event, it may be a case whereupon charge could be framed under Section 324 I.P.C. in case the injury is simple, Section 326 I.P.C. if the injuries are grievous. The aforesaid eventuality neither been perceived by the learned lower court nor the learned lower court had taken pain for consideration. Contrary to it, whatever interference has been drawn up by the learned lower court happens to be on its own without having proper supportive material available on the

record.

Accordingly, the order impugned is set aside.
Petition is allowed. Matter is remitted back to the learned lower court to proceed afresh in light of observation as made in forgoing paragraph.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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