

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30996 of 2015

Arising Out of PS.Case No. -117 Year- 2013 Thana -SIMRI District- BUXAR

Hare Ram Rai son of Late Kedar Rai, resident of village - Rajapur Benilal Ke Dera,
Police Station - Simri (Ramdas Rai Ke Dera), District - Buxar

.... Petitioner/s

Versus

1. The State of Bihar
2. Gudri Rai son of Late Sahdeo Rai
3. Kashi Nath Tiwary @ Kashi Tiwary son of Laxman Tiwary
4. Gorakh Tiwary son of Laxman Tiwary
5. Deepak Tiwary son of Nanhak Tiwary @ Pokan Tiwary
6. Saral Tiwary @ Satya Narayan Tiwary son of Dhaneshwar Tiwary
7. Shiv Jee Tiwary son of Saral Tiwary @ Satya Narayan Tiwary
8. Shankar Tiwary son of Saral Tiwary @ Satya Narayan Tiwary
All resident of village - Rajapur Benilal Ke Dera, Police Station - Simri,
District - Buxar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Roy, Advocate
For the Opposite Party/s : Mr. Nagendra Prasad, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-07-2016

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

2. The petitioner is aggrieved by the order dated 24.4.2015
passed by the learned Additional Sessions Judge, VII, Buxar, in
Sessions Trial No.398 of 2014 arising out of Simri P.S. Case No.117
of 2013 by which the court below has discharged the opposite party
no.2 to 7 under Section 307 of the Indian Penal Code (for short 'IPC')
and remitted the records to the learned Chief Judicial Magistrate,

Buxar to proceed ahead with the other offences under which cognizance was taken.

3. From perusal of the impugned order it would appear that upon submission of the police report under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC'), the learned Chief Judicial Magistrate, Buxar, took cognizance of the offences punishable under Sections 147, 148, 149, 341, 323, 324, 307, 504 and 506 of the IPC. Since the offence punishable under Section 307 of the IPC is triable by a court of session, the court of Magistrate committed the case of the accused persons sent up for trial to the court of Session. At the stage of framing of charge an application under Section 227 of the CrPC was filed by the accused persons. The plea of the accused persons was that in view of the allegations made in the FIR and the materials collected during investigation ingredients of the offence under Section 307 of the IPC are not attracted. After hearing the parties and perusing the materials available on record, the learned Additional Sessions Judge-VII, Buxar vide impugned order dated 24.4.2015 allowed the application of the accused persons to the extent indicated hereinabove.

4. Learned counsel for the petitioner has submitted that the order impugned is erroneous as the accused persons being variously armed had assaulted the informant and his brother. He has further

contended that no definite opinion could have been given at the stage of framing of charge by the trial court on the basis of materials available on records that the ingredients of the offence punishable under Section 307 of the IPC are not attracted.

5. Learned counsel for the State has opposed the application. He has submitted that from perusal of the impugned order itself it would transpire that offence under Section 307 of the IPC is made out.

6. I have heard learned counsel for the parties and perused the records. Admittedly, the alleged incident took place without any premeditation on account of flow of drain water. Though the allegation has been made that the accused persons were armed with pistol, *Farsa* and *Lathi*, the doctor, who examined the injured, did not find any grievous injury on the person of the two injured. The injuries found by the medical officer, Simri were all simple and superficial in nature. It is also pertinent to note that though there is allegation that the accused persons were armed with pistol, no firing was made and the informant alleged that the accused persons hit the informant by blunt portion of the firearm. On noticing the aforesaid aspects if the trial court has come to a conclusion that the ingredients of the offence punishable under Section 307 of the IPC are wanting, no illegality can be found with the order impugned.

7. Accordingly, the application, being devoid of any merit,

is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	