

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52169 of 2015

Arising Out of PS.Case No. -156 Year- 2012 Thana -MUSRIGHARARI District- SAMASTIPUR

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1. Digvijay Singh son of Sita Ram Singh
 2. Ram Kishore Pandit, son of Late Laldhari Pandit
 3. Sita Ram Singh, son of Late Nirdhan Singh

All are Resident of village- Fatehpur Diha Tola, P.S.- Musrigharari, District-
Samastipur

.... Petitioners

Versus

1. The State of Bihar
2. Ramashray Singh, son of Late Ram Prasad Singh,

Resident of village- Fatehpur Brahmsthan, P.S.- Musrigharari, District-
Samastipur

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Roy, Advocate

For the Opposite Party/s : Mr. Ajay Kumar-1, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-05-2016

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure, 1973 (for short
“CrPC”), the petitioners seek quashing of the order dated
01.09.2015 passed by the learned Additional Sessions Judge-III,
Samastipur in Sessions Trial No. 222 of 2013, arising out of
Musrigharari P. S. Case No. 156 of 2012, whereby the application
under Section 228(1) of the CrPC filed on behalf of the petitioners
has been dismissed.



2. The aforesaid police case was registered for the offence punishable under Sections 341, 323, 307 & 504/34 of the Indian Penal Code (for short "IPC"). On completion of investigation a report under Section 173(2) of the CrPC was submitted by the Investigating Officer in the court of learned Chief Judicial Magistrate, Samastipur. A perusal of the police report as contained in Annexure- 6 to the present application would indicate that charge-sheet against the petitioners was submitted only for the offences punishable under Sections 341, 323, 325 and 504/34 of the IPC. However, differing with the police report, learned Magistrate took cognizance of the offences punishable *inter alia* under Section 307 of the IPC and after complying the provisions prescribed under Section 307 of the CrPC, the case was committed to the court of sessions for trial.

3. At the stage of framing of charge, an application under Section 228(1) of the CrPC was filed on behalf of the petitioners which has been rejected vide impugned order dated 01.09.2015.

4. It has been contended by learned counsel appearing on behalf of the petitioners that a perusal of the material available on record would indicate that there is no ground for presuming that the petitioners have committed any offence punishable under Section 307 of the IPC. It has been contended that



all other offences under which charge-sheet was submitted by the police and cognizance has been taken by the Magistrate are triable by the court of Magistrate and hence, court of Sessions ought to have remitted the matter to the court of Magistrate after framing of charge for trial. It has been further contended that the injuries sustained by the victim cannot be a ground for attracting the ingredients of Section 307 of the IPC. There is no material on record on the basis of which it can be inferred that the petitioners ever intended to kill the informant of the case.

5. On the other hand, learned counsel for the State has submitted that from a bare perusal of the FIR, it would appear that there is specific allegation that petitioners no. 1 and 2 being armed with an iron rod and a *lathi* respectively along with petitioner no. 3 assaulted the informant Ramashray Singh, pursuant to which he sustained serious injuries and there is also allegation that they intended to kill the informant who could be saved due to intervention of local people. He has further contended that aforesaid allegations clearly attract the ingredients of an offence punishable under Section 307 of the IPC.

6. I have heard learned counsel for the parties and perused the materials on record.

7. Apparently, petitioners no. 1 and 2 being variously armed with an iron rod and a *lathi* respectively are

alleged to have assaulted the informant of the case and, at that time, the petitioner no. 3 is alleged to be the person, who was catching hold of the informant. The doctor, who examined the informant, has found altogether five injuries on his person. The informant was also sent for C.T. Scan. The injuries sustained by the informant were serious in nature. I also find that there is a categorical allegation in the FIR that the accused persons tried to kill the informant. Hence, it cannot be said that there was no intention to kill the informant. However, the life of the informant could be saved only due to intervention of local people who had assembled immediately after the occurrence. These allegations, in my opinion, do *prima facie* attract the ingredients of the offence punishable under Section 307 of the IPC.

8. In that view of the matter, I find no illegality in the impugned order passed by the learned court below, whereby the application under Section 228(1) of the CrPC filed on behalf of the petitioners was rejected. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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