

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34694 of 2016

Arising Out of P.S. Case No. -74 Year- 2014 Thana -THARTHARI District- NALANDA
(BIHARSHARIFF)

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Yogendra Prasad, son of late Ugrashen Singh, resident of village- Santan Bigha, P.S.- Tharthari, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Deonandan Singh, Son of late Hajari Singh.
3. Mantu Prasad, Son of Sri Sidheshwar Prasad.
4. Sidheshwar Prasad, Son of late Hajari Singh.
5. Ran Vijoy Kumar, Son of Sri Deonandan Singh,
6. Ragho Prasad, Son of late Hajari Singh.
All residents of village - Santan Bigha, P.S. - Tharthari, District - Nalanda.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Bhola Kumar, Advocate.
For the Opposite Party/s : Mr. Narsingh Tanti, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 30-08-2016

Heard both sides.

The petitioner preferred this petition under Section 482 of the Code of Criminal Procedure for quashing the order dated 29.06.2016 passed by the learned Additional Sessions Judge II, Hilsa (Nalanda) in S.T. No. 145/2016 by which he allowed the petition filed by the accused persons under Section 228 of the Code of Criminal Procedure and remitted the case to the court of the A.C.J.M. I, Hilsa for framing of charge holding that there is no material to frame charge under Section 307 IPC against the accused persons.

The informant Yogendra Prasad lodged Tharthari



P.S. Case No. 74/14 under Section 307 and other sections of the Indian Penal Code alleging therein that on 09.06.2014 his son Dinesh Prasad Singh was coming to his house with his tractor and when he reached towards north of his village, Deonandan Singh, Mantu Prasad, Sidhleshwar Prasad, Ranvijay Kumar, Ragho Prasad, all being armed with different weapons, began to assault the son of the informant with an intention to kill him. Deonandan Singh assaulted Mithilesh Prasad and Kamlesh Prasad with Farsa on their heads. When the informant went to save his sons, Deonandan Singh also assaulted the informant with Farsa just below his left hand.

The police, after investigation, submitted chargesheet under Section 307 and other sections of the Indian Penal Code and the case was committed to the court of sessions. The accused persons filed a petition under Section 228 of the Code of Criminal Procedure. The learned Additional Sessions Judge II, Hilsa held that there is no material to frame charge under Section 307 IPC against the accused persons and offences under Section 324 and other sections of the Indian Penal Code are triable by the court of Judicial Magistrate 1st Class. The learned Additional Sessions Judge II, Hilsa, vide order dated 29.06.2016, allowed the petition and remitted the case to the court of A.C.J.M. I, Hilsa to proceed

in accordance with law after framing of charge under Section 324 and other sections of the Indian Penal Code. The petitioner assailed the order impugned, *inter alia*, on the ground that the learned Additional Sessions Judge has held that no injury is grievous in nature and, therefore, no material to frame charge under Section 307 IPC is available against the accused persons.

It is submitted on behalf of the petitioner that in the case of **State of Madhya Pradesh v. Mohan** [(2013) 14 SCC 116], the Hon'ble Supreme Court has held that injury is not necessary for constitution of offence under Section 307 IPC; the intention on the part of the accused is important to be considered. Therefore, the order impugned is illegal and bad and the same is fit to be set aside.

It appears from perusal of the order impugned itself that Deonandan Singh is said to have assaulted Mithilesh Prasad and Kamlesh Prasad with Farsa on their heads. The informant is also alleged to have been assaulted with Farsa by Deonandan Singh. No other accused person assaulted the informant or his sons. There is no repetition of blow. The injuries caused on account of assault by Deonandan Singh are simple in nature. The attending circumstances clearly show that the intention to kill on the part of the accused persons was lacking as five accused

persons are alleged to have surrounded the informant and his sons but only one accused is alleged to have assaulted and there is no repetition of blow. The force of assault is such that only simple injuries were caused.

Considering the facts aforesaid, I find that the order impugned does not suffer from any illegality. Accordingly, this quashing petition is dismissed.

(Prabhat Kumar Jha, J)

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