

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Miscellaneous No.13875 of 2016**

Arising Out of PS.Case No. -64 Year- 2015 Thana -RASULPUR District- SARAN

- =====
1. Ram Ayodhya Tiwari, S/o Late Vishwanath Tiwari,
 2. Ashutosh Kumar Tiwari @ Ashutosh Tiwari, S/o Ram Ayodhya Tiwari, null
 3. Ghanshyam Tiwari @ Ashutosh Tiwari, S/o Ram Ayodhya Tiwari, All resident of village - Itahari, P.S. - Rasulpur, District - Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Harsh Singh-Advocate
Mr. Ravi Shankar Choudhary-Advocate
For the Opposite Party/s : Mr. Amit Kumar Rakesh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 11-08-2016

Petitioners, who are accused of Rasulpur P. S. Case No.64 of 2015 leading to Sessions Trial No.655 of 2015, are aggrieved by an order dated 18.02.2016 passed by the Additional District & Sessions Judge-5th, Saran at Chapra whereby and whereunder the learned lower Court rejected the prayer made on their behalf in accordance with Section 228(1)(a) of the Cr.P.C.

2. Informant, Sunil Kumar Tiwari, gave his fard-beyan on 20.06.2015 at about 5.00 p.m. disclosing therein that on the same day at 12.30 hours, Ram Ayodhya Tiwari, Ghanshyam Tiwari @ Pawan Tiwari, Ashutosh Kumar Tiwari, wife of Ghanshyam Tiwari along with three unknown persons came and directed him for



measurement of a land relating to which dispute was coming since before. On his disclosure, his father is not present and the measurement will be effected only in his presence, they began to abuse. On his protest, Ram Ayodhya Tiwari incited whereupon Ashutosh Tiwari took out 'farsa', gave blow over his head. Ghanshyam Tiwari @ Pawan Tiwari came with 'spear' and was to assault during midst of which, his brother Dhananjay and Santosh intervened in his rescue over which they both were assaulted by the accused persons over their head. Wife of Ghanshyam also assaulted with brick particle, Ram Ayodhya Tiwari assaulted with bamboo. The villagers came in their rescue and lifted the injured to the hospital.

3. On the basis of the aforesaid fard-beyan, Rasulpur P. S. Case No.64 of 2015 was registered under Section 147, 148, 149, 341, 323, 324, 307, 427, 504 of the I.P.C. and thereafter investigation commenced, concluded by way of submission of chargesheet under the aforesaid Sections. Cognizance was accordingly taken vide order dated 27.10.2015 and the case was committed on the ground of having the offences exclusively triable by the Court of Sessions.

4. At the stage of framing of charge, a petition on behalf of petitioners has been filed stating therein that no offence under Section 307 I.P.C. is made out on account thereof, this case should be remitted back to the learned lower Court as provided under Section

228(1)(a) of the Cr.P.C. which, the learned lower Court rejected, hence this petition.

5. During midst of pendency of instant petition, as is evident from I. A. No.1645 of 2016, vide order dated 30.03.2016, charges have already been framed, hence the same has also been brought up under purview of instant petition.

6. It has been submitted on behalf of petitioners that both the parties have sustained injuries and even considering the prosecution case for a moment to be authentic one for the present purpose, then in that event, manner of assault whatever been alleged did not speak with regard to intention or knowledge at the part of the accused persons while inflicting the injuries to commit murder. That being so, charge under Section 307 of the I.P.C. is found redundant.

7. Apart from this, referring the injury report of the respective injured attached with the petition under Exhibit-3 Series, it has been submitted that the allegation at the end of prosecution is not at all found corroborated therewith. As per fard-beyan, the informant Sunil Kumar Tiwari had specifically alleged that Ashutosh Tiwari had inflicted 'farsa' blow over his head while Ram Ayodhya Tiwari assaulted with leg, fists as well as bamboo. The injuries suggest presence of lacerated wound 1" x ½" x ¼" over right parietal occipital region, pain and swelling over occipital region, whole body pain



while the injuries over the person of Santosh Tiwari, pain and swelling over left parietal region, whole body pain. Over the person of Dhananjay Tiwari pain and swelling over occipital region, whole body pain. The doctor opined Injury No.1 of Santosh Tiwari as well as Dhananjay Tiwari to be grievous in nature while the injuries sustained by informant Sunil Tiwari to be simple in nature. Therefore, manner of assault with regard to informant, Sunil Kumar Tiwari is found completely contradictory in the pretext of allegation.

8. It has also been submitted that all the injured were examined on 20.06.2015 right from 1.10 pm. to 1.20p.m., C.T. Scan was conducted at different locations away from the place where they were admitted and examined and having absence of date of issuance of respective injury reports make successive injury report suspicious as well as doubtful and its genuineness would not be accepted.

9. In order to substantiate its plea, learned counsel relied upon *Rukmani Narvikar v. Vijay Sattar and others reported in (2008)14 SCC 1*.

10. The learned Additional Public Prosecutor opposed the prayer and submitted that whatever contention has been raised on behalf of petitioners happens to be matter of trial for proper adjudication. However, from the injury report having attached as an Annexure of the petition, it is evident that all the injured have



sustained injuries over their head, out of which, injuries over the person of Santosh Tiwari as well as Dhananjay Tiwari have been found grievous over head, vital part and that being so, it divulges the intention as well as knowledge on the part of the petitioners to have inflicted aforesaid injuries to commit murder. Repetition of blow is not the crucial point, the crucial point the manner whereunder assault was inflicted. Prosecution party were empty hand and during course thereof, were assaulted one by one over delicate part of body itself is sufficient to infer intention as well as knowledge of the accused while assaulting the prosecution party. Furthermore, the learned lower Court had appreciated the aforesaid event whereupon rightly rejected the prayer of the petitioners.

11. In *Rukmani Narvikar v. Vijay Sattar Dekar and others reported in (2008) 14 SCC 1*, as is evident from Para-9 thereof, it was the order of the cognizance and issuance of process which ultimately approached before the Hon'ble Apex Court. However, in Para-18, the stage was acknowledged and during course thereof, it was directed that it happens to be a matter of trial and so, quashing of the cognizance relating to one of the accused Ranjit Sattar Dekar was set aside. Subsequently thereof, the issue of charge has been taken up and more particularly in view of the judgment relating to *State of Orissa v. Debendra Nath Padhi reported in (2005)1 SCC 568* and

further, it has been observed:-

*“22. Reliance has also been placed on decision in the case of **P.S. Rajya v. State of Bihar (1996) 9 SCC 1**, where this court rejected the contention urged on behalf of the State that the points on which the accused was seeking quashing of criminal proceedings could be established by giving evidence at appropriate time and no case had been made out for quashing the charge itself. The charge was quashed by this Court. In this case too only on peculiar facts of the case, this Court came to the conclusion that the criminal proceedings initiated against the appellant-accused could not be pursued. Those peculiar facts have been noticed in paragraphs 14, 17, 18 and 19 of the decision. The contention of the accused based on those peculiar facts has been noticed in para 15 and that of respondent that the CBI was entitled to proceed on the basis of the material available and the mere allegations made by the accused cannot take the place of proof and that had to be gone into and established in the final hearing, has been noticed in para 16. After noticing those contentions and the decision in the case of **State of Haryana v. Bhajan Lal [1992 (Suppl.1) 335]** laying down the guidelines*



*relating to the exercise of extraordinary power under Article 226 or the inherent power under Section 482 of the Code for quashing an FIR or a complaint, this Court, on the peculiar facts, came to the conclusion that the case of the appellant could be brought under more than one head given in **Bhajan Lal's case (supra)** without any difficulty so as to quash the proceedings. In this background, observations were made in para 23 on which reliance has been placed on behalf of the accused whereby rejecting the contention of the State as noticed in para 16, the Court came to the conclusion that the criminal proceedings deserve to be quashed. In this case too the question was not about the right of the accused to file material at the stage of framing charge but was about quashing of proceedings in exercise of power under Section 482 of the Code. The decision in the case of **State of Madhya Pradesh v. Mohan Lal Soni (2000) 6 SCC 338**, sought to be relied upon on behalf of the accused is also of no assistance because in that case an earlier order of the High Court wherein trial court was directed to take into consideration the documents made available by the accused during investigation while framing charge had attained*

finality since that order was not challenged and in that view this Court came to the conclusion that the trial court was bound and governed by the said direction of the High Court which had not been followed.

*23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. **Satish Mehra's case (1996)9 SCC 766** holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided."*

12. From material available on the record, I do not see applicability of the aforesaid principle, because of the fact that injury report happens to be made Annexure of this petition and its genuineness on that very score, have not been doubted as not been challenged at the end of the State. Apart from this, presence of counter-case as well as parties are agnate to each other would not come within the purview of principle so laid down under the aforesaid citation as, those things are unimpeached document coupled with the fact that finding is yet to come.

13. *In Sonu Gupta v. Deepak Gupta & Ors. reported in*

2015(2) P.L.J.R. SC 321, it has been held:-

“8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an

opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial.”

14. In ***Narinder Singh and others v. State of Punjab and another reported in (2014)6 SCC 466*** wherein the matter relates with quashing of a proceeding in the background of compromise having effected amongst the parties, the Apex Court had occasioned to deal with other non-compoundable cases including Section 307 I.P.C. wherein it has been observed that for constitution of Section 307 of the I.P.C., the following ingredients are to be looked into. For better appreciation relevant Para is quoted below:-

“26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under [Section 307 IPC](#) as well. Therefore, only because FIR/Charge-sheet incorporates the provision of



Section 307 IPC would not, by itself, be a ground to reject the petition under section 482 of the Code and refuse to accept the settlement between the parties. We are, therefore, of the opinion that while taking a call as to whether compromise in such cases should be effected or not, the High Court should go by the nature of injury sustained, the portion of the bodies where the injuries were inflicted (namely whether injuries are caused at the vital/delicate parts of the body) and the nature of weapons used etc. On that basis, if it is found that there is a strong possibility of proving the charge under Section 307 IPC, once the evidence to that effect is led and injuries proved, the Court should not accept settlement between the parties. On the other hand, on the basis of prima facie assessment of the aforesaid circumstances, if the High Court forms an opinion that provisions of Section 307 IPC were unnecessary included in the charge sheet, the Court can accept the plea of compounding of the offence based on settlement between the parties.”

15. Considering the analogy of the principle laid down by the Hon’ble Apex Court as referred above, in order to perceive an

offence under Section 307 of the I.P.C. is made out or not, though roving inquiry is forbidden, but ex facie presence of injuries over the head of all the three injured out of whom, two have sustained grievous injuries along with the fact that head a delicate part of the body was aimed at and further, the weapon so used, though objected whereupon matter needs clarification justifying trial, for the present justify framing of charge whereupon instant petition sans merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

Vikash/-

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