

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30507 of 2014

Arising Out of PS.Case No. -21 Year- 2011 Thana -KALUAHI District- MADHUBANI

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1. Bechan Mahto S/O Late Jagdev Mahto
2. Rajnesh Kumar @ Ballo S/O Bechan Mahto
Both resident of village- Bahua tola, P.S.- Kaluahi, District- Madhubani.
..... Petitioner/s

VERSUS

THE STATE OF BIHAR OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Md. Soban Asghar, Adv.
For the Opposite Party/s : Mr. Akbar Ali (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 12.11.2013 passed by the Ad-hoc Additional Sessions Judge, IIIrd, Madhubani, in Sessions Trial No.100/2013.

From perusal of the order impugned, it is evident that learned lower court had failed to appreciate the relevancy of Section 227 as well as 228 of the Cr.P.C. True it is that for the purpose of framing of charge roving inquiry is not at all permissible and in likewise manner, meticulous examination of the materials having available on the record in terms of Section 173 of the IPC. Side by side, during exercise of such activity, the court has also to perceive that the allegation having attributed against the accused attracts what nature of the penal offence and if so, whether the same happens to be triable by the said court itself or is to be remitted back in terms of Section 228(1)(a) of the Cr.P.C.

From the written report itself it is evident that firing was made in the air without aiming at the informant only to terrorize him though other kinds of allegations have also been levelled. That means to say, by such activity, prima facie neither an intention nor knowledge could be attributed

against the petitioner for committing murder of the informant which happens to be the condition precedent for attracting Section 307 of the IPC.

That being so, 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 held hereinabove.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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