

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20925 of 2016

Arising Out of PS.Case No. -378 Year- 2015 Thana -GOPALGANJ CITY District- GOPALGANJ

- =====
1. Sachita Nand Prasad Son of Late Ram Tahal Prasad
 2. Sunaina Devi Wife of Late Ram Tahal Prasad
 3. Asha Devi Wife of Sachita Nand Prasad
 4. Dhanmati Kumari Daughter of Late Ram Tahal Prasad
- All Resident of village - Banjari Ward No. 12, P.S. Gopalganj, District - Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Lalmati Devi Wife of Manager Prasad Resident of village - Banjari Ward No. 12, P.O. & P.S. Gopalganj, District - Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Zabed Aslam, Adv.
For the Opposite Party/s : Mr. A.K. Chaudhary (APP)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

2 27-09-2016 Heard learned counsel for the petitioners and counsel

for the State.

In this case the petitioner is challenging an order dated 19.2.2016 in Gopalganj P.S. Case No. 378 of 2015 (Tr. No. 2682 of 2016) by which cognizance has been taken under Sections 341, 323, 447, 307, 504/34 of the Indian Penal Code.

Learned counsel for the petitioners submits that there is no external or internal injury found on the body of the victim. The police, after investigation, has not submitted charge-sheet under Section 307 of the Cr.P.C. and so much so the petitioner no.4 has not been sent up by the police which is absolutely clear

from the charge-sheet itself.

The Magistrate has taken cognizance on the basis of material available on record. Merely the police have not sent up the petitioner no.4 will not be binding on the Magistrate nor the Section of the I.P.C. will be binding upon him. The Magistrate is at liberty to examine the materials available in the Case Diary and the Magistrate has power to take cognizance under proper provision and against the proper person. Merely police has not submitted the charge-sheet against the accused persons ipso facto will not be binding on the Magistrate.

This Court is not inclined to accept the submission of the learned counsel for the petitioner and, thus, does not find any error in the order taking cognizance.

This application is, accordingly, dismissed with a liberty to the petitioners to raise all the points at appropriate stage.

(Shivaji Pandey, J)

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