

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18092 of 2014

Arising Out of PS.Case No. -31 Year- 2013 Thana -KORANSARAI District- BUXAR

- =====
1. Raj Kishor Mishra, son of late Ram Chandra Mishra
 2. Chandan Mishra @ Bhikhari Mishra, son of Raj Kishor Mishra
- Both are residents of Village-Harani Chatti, P.S. Koran Sarai, District-Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Arati Devi, W/o Binod Yadav, resident of village Haranichati, P.S. Koran Sarai District-Buxar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Gopal Pandey, Advocate.

For the Opposite Party/s : Mr. Nagendra Prasad, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 2.7.2013 passed by the learned Chief Judicial Magistrate, Buxar, in Koran Sarai P.S. Case No. 31 of 2013, G.R. No. 920 of 2013, Trial No. 3283 of 2013, by which the learned Magistrate has taken cognizance against the petitioners and four other accused persons for the offences under Sections 341, 323 and 504/34 of the Indian Penal Code.

2. The informant alleged in the instant case that on the date of occurrence six accused persons including these petitioners were cutting palm (*Bair*) tree standing in the field of the informant



with Tangi, Rama and Kudal. The informant after having heard the sound of cutting tree, went to the place of occurrence, and stopped the accused person who was cutting the tree in question. Thereafter, the accused persons started abusing her and also told her to go away from there. The accused persons had given threat to shoot her. It is further alleged that the accused persons also made firing. The accused Chandan Mishra @ Bhikhari Mishra (petitioner No.2) armed with *katta* came there and fired two shots. All the accused persons committed *Mar-Pit* with the informant, her mother-in-law and sister-in-law (*Gotni*).

3. Heard learned counsel for the petitioner and learned counsel for the State.

4. Learned counsel for the petitioner has submitted that for the same occurrence, counter case bearing Koran Sarai P.S. Case No. 30 of 2013 was lodged by one of the co-accused Tarkeshwar Mishra against the informant and 15 others. It has further been submitted that there is allegation against the petitioners that they have made firing but in the entire case diary, there is no any material to support such allegation of firing made by these petitioners. There is no mention of any firearm injury in the case diary.

5. In the instant case, police after investigation, has not sent up the petitioners for trial.



6. The court below has by the impugned order taken cognizance against both these petitioners along with other accused persons for the offence punishable under Sections 341, 323 and 504/34 of the Indian Penal Code.

7. The police has mentioned during investigation that petitioner being the student of B.ed, resides at Gwalior and pursued his B.ed course whereas petitioner No. 1 Raj Kishore Mishra was not present on the spot. He was present at that time with his family members at his house situated at Adarshnagar Collecteriate Road, Buxar.

8. The case diary has been called for from the court below and on perusing of the same, it appears that besides further statement of the informant, the statement of one more witnesses have been recorded. Besides the informant, no other witness has stated anything against these petitioners. Both these petitioners have not been sent up for trial.

9. From the impugned order it appears that the court below in mechanical manner without perusing the material available in the case diary, took cognizance against the petitioners along with four other accused persons against whom the police has submitted charge sheet.

10. Therefore, this Court is of the view that the



impugned order with regard to the petitioners is not in accordance with law.

11. Accordingly, the impugned order dated 2.7.2013 passed by the learned Chief Judicial Magistrate, Buxar, along with the entire Criminal Proceeding against the petitioners in connection with Koran Sarai P.S. Case No. 31 of 2013, G.R. No. 920 of 2013, Trial No. 3283 of 2013, is hereby quashed.

12. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	17/11/2017
Transmission Date	17/11/2017

