

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34711 of 2013

Arising Out of PS.Case No. -7 Year- 2008 Thana -BRAHMPURA District- MUZAFFARPUR

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1. Shravan Kumar S/O Sri Suresh Sah Proprietor Man Bhagwati Light House, Soda Godown Chouk, P.S. Brahmpura, District Muzaffarpur.
 2. Suresh Sah S/O Late Ram Pratap Sah Proprietor Man Bhagwati Light House, Soda Godown Chouk, P.S. Brahmpura, District Muzaffarpur.

.... Petitioners

Versus

The State Of Bihar.

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Satish Kumar Sinha, Advocate.

For the Opposite Party : Mr. Nityanand (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 27-04-2017 This Criminal Miscellaneous has been filed for quashing the order dated 13.12.2010 passed in Sessions Trial No. 965 of 2009 arising out of Brahmpura P.S. Case No. 07 of 2008 by the Additional Sessions Judge, Fast Track Court No.5, Muzaffarpur, whereby and whereunder, the discharge petition filed by the petitioners was rejected.

Heard the learned counsel for the petitioners, the learned A.P.P. for the State and the learned counsel for the Informant.

Perused the Photostat copy of the case diary also. On the basis of the complaint petition Brahmpura P.S. Case No. 07 of 2008 was instituted with the allegation that petitioner no.1 threw



bomb crackers after burning which exploded in front of husband of the informant causing injury in his right eye and he fell down. When the complainant/informant was going to the police station the petitioners forbade her and assured to meet all the expenses of treatment of her husband. The petitioners brought the husband of the complainant/informant at Chapra but the doctor referred the husband of the complainant/informant to S.K. Medical College and Hospital, Muzaffarpur and then on the ambulance the husband of the complaint/informant was brought to S.K. Medical College and Hospital, Muzaffarpur and after admitting the husband of the complainant/informant the petitioners fled away from there. The doctor treating the husband of the complainant/informant told that right eye has been damaged and thereafter he was discharged on 12.11.2007. The Panches tried to intervene into the matter. The petitioners took time to get him treated but lastly refused and then complaint case was lodged on 03.01.2008.

The police investigated the case and after completing investigation submitted charge sheet under sections 307 and 308 of the I.P.C against the petitioners. Accordingly, cognizance was taken and thereafter the petitioners appeared and filed petition under section 227 of the Cr.P.C for discharging them which was rejected by the impugned order.



Submission on behalf of the petitioners is that from the statement of the informant, vide paragraph-5, and the statement of the injured, vide paragraph-6, no offence under sections 307 and 308 of the I.P.C. is made out against the petitioners. This case has been lodged only with a view to extract money. The informant and the victim in their statements have stated that the injured was watching the crackers at the time of Dipawali and when he was watching the same one of the flame of the crackers entered into his eye causing injury. The injured has further stated that if the petitioners will give the expenses of treatment he will withdraw the case and as such the discharge petition filed by the petitioners having merit, was dismissed without any ground. Submission of the learned A.P.P. is beyond the record and error of the record. The statements of the other witnesses also, vide paragraphs- 5, 6, 7, 8, 10, and 11; have retracted the version of the victim. None of them have stated that the petitioners voluntarily and intentionally injured the victim and as such continuation of the proceeding is misused of the process of law and the impugned order is fit to be quashed.

The learned A.P.P. and the learned counsel for the informant, on the other hand, submit that in the First Information Report which is the complaint petition there is allegation that



petitioner no.1 threw bomb crackers which exploded in front of husband of the complainant/informant causing injury in his eye. Up till now three charge sheet witnesses have been examined out of seven charge sheet witnesses and as such this Criminal Miscellaneous being merit less is fit to be dismissed.

Having considered the submissions urged at the bar, going through the record and the Photostat copy of the case diary and noticing that the complainant/informant, victim and other witnesses in their statements recorded under section 161 of the Cr.P.C. during investigation have not stated that the petitioner Shravan Kumar exploded bomb crackers intentionally aiming the husband of the complainant/informant rather they have specifically stated that the husband of the complainant/informant was watching explosion of the crackers and in that time one of the flame entered into his eye causing injury to him and that was the flame exploded by the petitioner Shravan Kumar. It is manifest that the act was not intentional rather it was accidental one and as such no offence under sections 307 and 308 of the I.P.C. is made out.

In the result, the impugned order dated 13.12.2010 passed by the then Additional Sessions Judge, Fast Track Court No.5, Muzaffarpur is hereby quashed and the petitioners are



discharged from the Sessions Trial No. 965 of 2009 arising out of
Brahmpura P.S. Case No. 07 of 2008.

Accordingly, this Criminal Miscellaneous is hereby
allowed.

(Jitendra Mohan Sharma, J)

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