

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34927 of 2013

Arising Out of PS.Case No. -312 Year- 2011 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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Munna Singh S/O Late Nanku Singh R/O Village + P.O.- Gidha, P.S.-
Dawath, District- Rohtas

.... Petitioner/s

Versus

1. The State Of Bihar
2. Munna Tiwary @ Yogendra Tiwry, S/O Mandip Tiwary, R/o Village
Nawadih, P.S. Dawath, District- Rohtas
3. Madhurendra Tiwary, son of Indrajeet Tiwary, R/o Village-Hathdiha,
P.S.Dawath, District- Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rakesh Narayan Singh, Advocate
For the State	:	Dr.Kumar Uday Pratap (APP)
For the O.Parties	:	Mr. Ajay Kumar Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

6 28-08-2017 Heard learned counsel for the petitioner, State and
learned counsel appearing for the opposite parties.

The petitioner has filed this application for quashing of the order dated 31.3.2013 whereby the learned 4th Additional Sessions Judge, Rohtas at Sasaram in exercise of revisional power, has remanded the matter back to the learned Sub-Divisional Judicial Magistrate, Bikramganj, Rohtas after setting aside his order 23.3.2012 with a direction to pass fresh order on the basis of the evidence available on the record. In para-7 of the order the learned Additional Sessions Judge has observed that from the materials available on the record, it appears that a case



under Section 307 of the Indian Penal Code and Section 27 of the Arms Act appears to be prima facie made out.

Counsel for the petitioner submits that in the instant case there is allegation of firing which caused death of Rajeshwar Tiwary and as such the Court below has committed error in remanding the matter by observing that prima facie case under Section 307 of the Indian Penal Code and Section 27 of the Arms Act is made out instead of holding that the case under Section 302 of the Indian Penal Code is also made out.

Counsel for the opposite parties submits that the present case is evidently false and fabricated by the petitioner as they are the real culprit in the instant case and in order to save their skin they have filed the present complaint case. Counsel for the opposite parties submits that the order of the learned Additional Sessions Judge dated 31st January, 2013 was passed without hearing the parties as counsel for the opposite parties pleaded total ignorance of the order dated 31.1.2013.

Counsel for the opposite parties further submits that for the same occurrence Sessions Trial No. 30/2012 is pending and as such there cannot be two cases for the same incident with two different version.

This Court refrain from passing any order on the



submission made by learned counsel for the opposite parties. It shall be open to the opposite parties to make all such submissions before the court below and the court below will consider all such submission at the time of passing final order in this case.

This Court in exercise of jurisdiction under Section 482 Cr.P.C. will not decide the matter on merit particularly in view of the fact that the order dated 31.1.2013 was passed without hearing the opposite parties.

In the fitness of things the order dated 31.1.2013 is quashed and the matter is remanded back to the Sessions Judge for decision afresh in the Revision Application No. 185/2012.

The court below is directed to issue notice to the opposite parties and only after hearing the parties, pass a fresh order and if there are materials available on the record that Rajeshwar Tiwary @ Pappu Tiwary died due to the firing made by Munna Tiwary and Madhurendu Tiwary. The Court below is directed to pass fresh order considering the factum of death in the incident and direct allegation of firing.

It is made clear that this Court has not expressed any opinion on the merit of the case. The court below is directed to pass afresh order in accordance with law after hearing the parties within a period of three months from the date of



receipt/production of a copy of this order.

(Anil Kumar Upadhyay, J)

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