

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47219 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

- =====
1. Narayan Poddar, son of late RAdho Poddar,
 2. Santosh Poddar.
 3. Sikendar Poddar
 4. Shambhu Poddar
- All sons of Narayan Poddar
5. Raja Poddar, Son Of Shambhu Poddar, Resident Of Choti Baliya, Maluna Chowk, P.S.- Baliya, District- Begusarai.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Vikash Kumar Son of Arun Poddar Resident of - Choti-Baliya, Maluna Chowk, P.S.- Baliya, District- Begusarai.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-06-2017

Heard learned counsel for the parties.

Petitioners are accused in Balia P.S.Case No. 133 of 2012.

In the said case, cognizance has been taken under Sections 307, 147, 323 and 504 of the Indian Penal Code. Against the said order, the petitioners moved a petition under Section 228 of the Cr.P.C. before the court of Additional District and Sessions Judge-2, Begusarai in S.T. No. 308 of 2013 to send the case to the court of learned Chief Judicial Magistrate for trial as it is not exclusively triable by the



Sessions Court for the reason that no *prima facie* case is made out under Section 307 of the Indian Penal Code and rest other sections are exclusively triable by the Magistrate of first class, but the same was rejected by the impugned order dated 26.08.2013.

Learned counsel appearing on behalf of the petitioners submits that no reason is assigned in the impugned order dated 26.08.2013 for rejecting the petition, the same was rejected only on the ground that cognizance has already been taken by the learned Chief Judicial Magistrate under Section 307 of the Indian Penal Code as the accused persons had intention to kill the informant because they assaulted him with knife, but the fact remains that only two persons are said to be injured in this case and not three, moreover injury on the person of Vikash Kumar is only one lacerated wound on chest caused by hard and blunt object and the doctor has opined the nature of injury simple so no injury by knife and the injury of second injured Prince Poddar is only abrasion found on his back and neck and that too simple in nature and there is no piercing wound whereas the doctor has opined that the weapon used is pointed object.

Having considered the rival submissions and on perusal of record, the allegation levelled in the FIR as well as the injury reports of two injured, I find that injuries are simple in nature in the form of lacerated wound on one injured and abrasion on another and the



injuries do not appear to be caused by a piercing instrument as there is absence of such injury and no intervening circumstance to desist further assault. So *prima facie* case under Section 307 of the Indian Penal Code is not made out hence the case only stands exclusively triable by a court of Chief Judicial Magistrate or a Judicial Magistrate of first class, therefore, impugned order is set aside and the trial will proceed against the petitioners by the court of Chief Judicial Magistrate.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.07.2017
Transmission Date	10.07.2017

