

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30167 of 2014

Arising Out of P.S.Case No. -77 Year- 2012 Thana -SHEIKHOPUR SARAI District- SEKHPURA
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1. Md. Moid Alam @ Md. Moid son of Late Hameed
2. Md. Azhar Hussain @ Azhar Husain, son of Late Manzoor Alam
3. Md. Majid
4. Md. Rashid
5. Danish, All sons of Md. Azhar Hussain
6. Md. Mursheed
7. Md. Rashid Both sons of Md. Moid Alam
8. Kamal son of Md. Quamruddin
9. Md. Aslam son of Late Shafi
10. Md. Shamim son of Late Shafi All residents of village - Charuawan,
P.S. Shekhopur Sarai, District - Shekhpura.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party
=====

Appearance :

For the Petitioners : Mr. Md. Anisur Rahman, Advocate
For the Opposite Party : Mr. Hunayu Ahmad Khan, APP
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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

2 07-07-2017 Heard.

2. Petitioners seek quashing of order dated 29.08.2013 passed by CJM, Shekhpura in G.R.No.1235 of 2012 arising out Shekhopur Sarai P.S.Case No.77 of 2012. The learned CJM as per above order took cognizance against the petitioners and summoned them to face trial for the offence under Sections 143, 144, 148, 149, 341,323, 324, 325, 504, 506 and 427 of the IPC.

3. The informant has alleged that on 27.11.2012 all the petitioners along with several others while returning after



completing the procession of *Tajia* and reached near the house of the informant they started damaging the *khapra* of his house by *lathi* and *saif*. They abused the informant and assaulted with intention to commit his murder.

4. The learned counsel for the petitioners submits that on the date of occurrence they were carrying *Tajia* in a procession after taking permission from the administration. The informant and his men had also carried *Tajia* but without taking permission. On account of high handedness on the part of the informant occurrence of assault took place and both parties sustained injuries. The petitioners also lodged Sheokhopur Sarai P.S.78 of 2012 against the informant and others. The learned Magistrate without considering the material available on record and ascertaining the fact has passed the order in mechanical manner and so the impugned order is fit to be quashed. The learned lawyer for the informant as well as APP opposed the submissions.

5. The learned counsel for the informant submits that the trial before the court below is at the fag end and as many as five witnesses have been examined and the case is pending for evidence of remaining witnesses. The witnesses have supported the case at time of investigation and police have submitted chargesheet against the petitioners. The learned Magistrate on



being satisfied with the materials on record rightly took cognizance of offence against the petitioners.

6. On going through the order of court below as well as written report, I find that there is a specific allegation that on the date of occurrence all the petitioners along with others formed an unlawful assembly. After completing the procession of *Tajia* they reached near the house of the informant and started damaging tiles of the roof of the informant. They also assaulted the informant and his men. The learned Magistrate after going through the statement of witnesses has rightly taken cognizance against the petitioners. It is not in dispute that the witnesses have already been examined and the trial is at the fag end of disposal.

7. In view of discussions made above, I do not find any merit in this application. This application is accordingly dismissed.

(Sanjay Kumar, J)

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