

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2331 of 2015

Arising Out of PS.Case No. -137 Year- 2011 Thana -BHAGWAN BAZAR District- SARAN

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1. Yogendra Prasad Son of Late Shiv Nath Sah
2. Amaresh Kumar Son of Yogendra Prasad
3. Ravi Kumar Son of Yogendra Praad All are resident of Mohalla - Fidar Bazar,
Police Station - Bhagwan Bazar, District - Saran (Chapra).

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Rai, Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 07-03-2017

Heard learned counsel for the petitioners and the learned
Additional P.P. for the State.

The petitioners have filed this petition for quashing the
order dated 15.11.2014 by which the petition of the petitioners filed
under Section 228 of the Cr. P.C. has been dismissed holding that
sufficient material is available on the record to frame charge under
Section 307/34 I.P.C. also, besides other sections.

One Binod Kumar lodged Bhagwan Bazar P.S. Case No.
137 of 2011 under Section 307 and other sections of the Indian Penal
Code and alleged that due to land dispute, his uncle Yogendra Prasad,
and his two sons Amaresh Kumar and Ravi Kumar abused him and



uncle Yogendra Prasad assaulted him with the handle of hand-pump. He got injury on his head. Accused Amaresh Kumar assaulted him with 'khanti' on his armpit. When Manoj Kumar, Rakesh Kumar, wife Gudia Devi and mother Shanti Devi came to save him, then Ravi Kumar assaulted Rakesh Kumar with khanti on his head causing injury. The accused persons also assaulted his wife and mother with iron rod.

The police, after investigation, submitted final form finding the case true under Sections 341, 323, 504 and 34 of the Indian Penal Code, but the learned Chief Judicial Magistrate took cognizance under Section 307/34 I.P.C. and other Sections of the Indian Penal Code and the case was committed to the court of sessions.

The petitioners filed a petition under Section 228 of the Cr.P.C. stating that no offence under Section 307 of the I.P.C. is made out and the case be remitted to the Chief Judicial Magistrate for trial, but the learned Sessions Judge, 8th, Chapra at Saran dismissed the petition of the petitioners vide order dated 15.11.2015.

The learned counsel for the petitioners submits that there is no material available on record to frame charge under section 307 of the Indian Penal Code. Only one injury was found on the person of the informant, which was caused by hard and blunt substance and not



by sharp edged weapon. Injury is found to be simple in nature. There is no repetition of blow nor there is any attending circumstances to show that the petitioners assaulted the informant and his family members with such an intention to cause death. Besides this, there is a counter version also.

The learned Additional P.P., however, submits that the injury is immaterial for constituting an offence under Section 307 of the Indian Penal Code and the intention can be gathered from attending circumstances.

Having heard the submissions of the parties and on perusal of the record I find that the learned Sessions judge has erred in holding that there is sufficient material to frame charge under Section 307 of the Indian Penal Code, besides other sections of the Indian Penal code. The informant has stated that he was assaulted with the handle of the hand-pump. There is no repetition of blow and simple injury was caused to the informant. Similarly, another person is said to have been assaulted on head and one lacerated wound was found on the head of the informant. There is no repetition of blow and the injuries were simple in nature. There is no attending circumstances to show that the assault was made with an intention to kill. Therefore, I find that the order suffers from material irregularity and is not sustainable.



The quashing petition is allowed. The order dated 15.11.2014 is set aside and matter relegated to 8th Additional Session Judge, Saran Chapra to pass further order in accordance with law.

(Prabhat Kumar Jha, J)

BTiwary/-

AFR/NAFR	
CAV DATE	
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