

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46860 of 2014

Arising Out of PS.Case No. -142 Year- 2011 Thana -PAROO District- MUZAFFARPUR

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1. Abid Hussain @ Sahjade
2. Wahid Hussain @ Mannu
3. Sahid Hussain @ Tunnu All son of Late Md. Ishak
4. Md. Nasim Ahmad @ Lal Babu S/o Md. Azim
5. Md. Yusuf S/o Late Anwarulhuq R/o village - Rampur Kesho (Malahi),
P.S. Paroo, Distt. - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Reyaz S/o Md. Islam R/o Vill. - Rampur Kesho (Malahi), P.S.
Paroo, Distt. - Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the Opposite Party/s : Mr. J.Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

2 11-10-2017 This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order 08.09.2014 passed by learned 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 334 of 2014 arising out of Paroo P.S. Case No. 142 of 2011 by which the learned court has rejected the application filed under Section 228(1) of the Code of Criminal Procedure with a prayer that offence under Section 307 of Indian Penal Code is not made out.

2. Briefly stated, the facts of the Case is that a written report was filed by informant on 01.06.2011 that on 30.05.2011 at about 10:00 AM he along with his father Md. Islam and others



were repairing the hut in the meantime accused petitioners armed with Pharsa, Lathi attacked them and as a result of which informant and others sustained injuries and Md. Akbar took out Rs. 5000/- from the pocket of the informant and on the basis of aforesaid complaint F.I.R. was registered under Sections 147, 148, 149, 504, 427, 307, 379, 342 and 467 of the Indian Penal Code. F.I.R. was registered as Paroo P.S. Case No. 142 of 2011.

3. After investigation, police submitted charge sheet under Sections 147, 148, 149, 341, 342, 323, 324 and 504 of the Indian Penal Code. The learned court below took cognizance of the offences under Sections 147, 148, 149, 341, 342, 307 323, 324 and 504 of the Indian penal Code against these petitioners without considering the nature of injuries and genesis of occurrence and the case was committed to the Court of Sessions. It has further been submitted that for the same occurrence petitioner No. 1 had also filed F.I.R. on 30.05.2011 against the opposite party No. 2 and others for offences under Sections 147, 148, 149, 447, 504, 384, 324, 307, 342, 467 and 506 of the Indian Penal Code and 27 of Arms Act and same was registered as Paroo P.S. Case No. 130 of 2011.

4. It has been further submitted that after commitment of this case learned Sessions Judge, Muzaffarpur



registered this case as Sessions Trial No. 334 of 2014 and transferred to the 3rd Additional Sessions Judge, Muzaffarpur.

5. The petitioners have filed a petition under Section 228(1) of the Code of Criminal Procedure for deleting section 307 of I.P.C. as no case under Section 307 of I.P.C. was made out and case be retrieved to S.D.J.M. (W) Muzaffarpur or Judicial Magistrate 1st Class.

6. The application of the petitioners was considered by the 3rd Additional Sessions Judge, Muzaffarpur and after hearing both the parties rejected the application and hold that section 307 of the Indian Penal Code is made out, as such, the case was triable by the Court of Session.

7. It has been further submitted that except offence under Section 307 of the Indian Penal Code all other offences instituted under different section of I.P.C. are either bailable or triable by Magistrate. After investigation the police has submitted charge sheet under different section of I.P.C. The police has also not submitted charge sheet under Section 307 I.P.C. as no case of 307 was made out.

8. It has been further submitted that there is long standing dispute between the parties which has resulted in present case and counter case arising out of land dispute.



9. It has further been submitted that the petition of opposite party No. 2 has been twice dismissed by Consolidation Authority . As such, the petition filed by petitioners under Section 228 (1) of Code of Criminal Procedure for deleting of section 307 of I.P.C. from the charge may be allowed.

10. The Courts are empowered to alter, add, delete charges at any stage of trial before judgment. There are concurrent finding of the courts below regarding sufficient material available in case record to frame charge under Section 307 of I.P.C. as such, I am not inclined to interfere in the order passed by Courts below, as such present petition is dismissed.

(S. Kumar, J)

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