

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49244 of 2014

Arising Out of PS. Case No.-50 Year-2012 Thana- OBRA District- Aurangabad

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1. Rameshwar Paswan Son of Late Narayan Paswan
 2. Anil Paswan Son of Late Ramashish Paswan
 3. Guddu Paswan Son of Bhola Paswan
 4. Santosh Paswan Son of Late Ramashish Paswan
 5. Pappu Paswan Son of Krishna Paswan
 6. Manoj Paswan Son of Late Narayan Paswan
 7. Ramji Paswan Son of Late Rajeshwan Paswan All resident of village - Ratwar P.S.- Obra, District - Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bijendre Kumar Son of Late Suresh Paswan Resident of Village - Ratwar. P.S. Obra, District - Aurangabad (Bihar)

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Chandra Bhaskar
For the Opposite Party/s : Mr. Sanjay Kumar Sinha (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-10-2017

Heard learned counsel for the parties.

The present petition filed under Section 482 of the Cr.P.C has been filed for quashing the order dated 13.09.2012 passed by the Additional District and Sessions Judge, Aurangabad(Bihar) in Sessions Trial No. 357 of 2012 in Tr. No. 249 of 2012, by which cognizance has been taken under Sections 147, 148, 149, 323, 324, 325, 504 and 307 of the Indian Penal Code.

The present petition itself seems to be misconceived as Sessions Court does not take cognizance of the offence as the



cognizance of the case is taken by the Chief Judicial Magistrate or Judicial Magistrate of First Class and if the case is triable by a Sessions Court the same is committed to the court of Sessions.

Briefly stated, the facts of the case is that on written statement of informant Vijendra Kumar that on 19.03.2012 at about 7:00 pm when he was at home many persons came to his house and when he went with them and reached the place of occurrence(near a bridge) then Manoj Paswan used abusive language against him and said 'Rangdar Banta Hai' then all other accused persons came near him and assaulted him with lathi and danda. On raising alarm by the informant the family members reached the place of occurrence where his mother also received injuries. On the basis of written report Cobra P.S. Case No. 50 of 2012 dated 19.03.2012 was registered under Sections 341, 323, 324, 504/34 of the Indian Penal Code. The petitioner had also lodged an FIR giving rise to Obra P.S. Case No. 51 of 2012 dated 19.03.2012 under sections 341, 323, 324, 504/34 of the Indian Penal Code and present case is a counter case of the said case. No one has sustained any grievous injury and no injury has been caused on vital part of the body. However, after investigation police has submitted chargesheet under Section 147, 148, 149, 323, 324, 325 and 307 of the Indian Penal Code



and on the basis of chargesheet, police papers and case diary, the court below took cognizance among other sections also under Section 307 of the Indian Penal Code, and the same being triable exclusively by the court of Sessions, the case was committed to the court of Sessions.

FIR was registered under sections 341, 323, 324, 504/34 of the Indian Penal Code on the basis of complaint of the informant. During investigation the witnesses have supported the case of the informant but they cannot improve the case of the complainant and make it graver.

From the reading of the *fard beyan* no offence under Section 307 of the Indian Penal Code is made out and as such the case was not registered under Section 307 of the Indian Penal Code but after investigation police has submitted chargesheet also under section 307 of the I.P.C.

Apart from other sections, the court below also took cognizance under Section 307 of the Indian Penal Code and the case was committed to the court of Session. The courts are empowered to add, alter or delete charges at any stage during trial before judgment. A case triable by the Judicial Magistrate can be tried by the Sessions Court but a case exclusively triable by the Sessions Court cannot be tried by a Judicial Magistrate.



Trial before Sessions Court will not prejudice the petitioners as even though the charges have been framed under Section 307 of the Indian Penal Code it is not necessary that the Sessions Court will convict them under Section 307 of the Indian Penal Code.

Considering the facts and circumstances of the present case and in view of the fact that the case was committed to the court of Sessions on 13.09.2012, I am not inclined to interfere with the order passed by the court below at this stage.

As such the present petition filed by the petitioners is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.11.17
Transmission Date	02.11.17

