

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31222 of 2014

Arising Out of PS.Case No. -38 Year- 2012 Thana -KANTI THARMAL POWER District-
MUZAFFARPUR

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1. Devendra Paswan S/o Ganaur Paswan
2. Rabindra Paswan S/o Ganaur Paswan
3. Arbind Paswan @ Arvind Kumar S/o Harihar Paswan
4. Pankaj Kumar S/O Harihar Paswan
5. Dilip Kumar S/o Harihar Paswan
6. Raj Kumar S/o Harihar Paswan
7. Harihar Paswan s/o Deoki Paswan
8. Gonaur Paswan S/o Deoki Paswan All residents of Village Kanti Kaswa, Ward No. 3, P.S. Kanti, District Muzaffarpur

.... Petitioners

Versus

1. The State of Bihar
2. Shobha Devi W/O Pundeo Das, resident of Village Kanti Kaswa, Ward No. 3, P.S. Kanti, District Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Manoj Kumar Ambastha, Advocate
For the State	:	Mr. Ram Sumiran Roy, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-07-2017

The petitioners-accused of Kanti P.S. Case No.38 of 2012 have challenged the order dated 10.4.2014 passed by Adhoc Additional Sessions Judge 2nd, Muzaffarpur in Sessions Trial No.670 of 2013 whereby a petition filed under Section 228 Cr.P.C. requesting for sending the case back to C.J.M. as this case is not exclusively triable by the Sessions Court rather triable by Judicial Magistrate 1st Class was rejected.



2. Learned counsel appearing on behalf of the petitioners submits that the contents of the allegation levelled in the F.I.R. and the evidence collected during investigation clearly show no prima facie case being made out under Section 307 of I.P.C. F.I.R. was registered under Sections 341, 342, 323, 324, 307, 504, 506/34 of I.P.C. but finding no prima facie case of attempt to murder police not submitted charge sheet under these sections rather charge sheet was submitted under Sections 323, 341, 504, 506/34 of I.P.C.

3. Learned counsel for the petitioners also refers to the injury report of injured persons showing they have suffered pain except one lacerated wound over the head of the informant and as per allegation, she was assaulted on the head by the butt of the pistol. The occurrence took place on the issue of theft of mobile and no deadly weapon was used by any of the accused. There is no any mark of injury on the neck of the informant whereas learned counsel appearing on behalf of the informant-opposite party no.2 submits that one of the accused tried to strangle her.

4. Having considered rival submissions of both sides and on perusal of the record, I find that even the allegations as levelled in the first information report as well as the evidence collected during investigation including injury report do not make out a prima facie case under Section 307 of I.P.C. so this case is not



exclusively triable by the Sessions Court rather it is triable by the court of the Chief Judicial Magistrate. Moreover, the report of the court below also shows that the case is at the stage of framing of charge so the order dated 10.4.2014 passed in Sessions Trial No.670 of 2013 by Adhoc Additional Sessions Judge 2nd, Muzaffarpur is hereby set aside with a direction to send back the case to the court of C.J.M. for trial of accused persons.

5. Accordingly, this petition is allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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