

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46211 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

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Ravindra Mishra Son Of Ram Bhavesh Mishra Resident Of Village- Shripur Gahar,
Police Station- Khanpur, District- Samastipur

.... Petitioner

Versus

1. The State Of Bihar
2. Ram Naresh Mishra Son Of Late Sukhadev Mishra Resident Of Village- Shripur Gahar, Police Station- Khanpur, District- Samastipur
3. Niranjana Mishra Son Of Ram Naresh Mishra Resident Of Village- Shripur Gahar, Police Station- Khanpur, District- Samastipur
4. Govind Mishra Son Of Ram Naresh Mishra Resident Of Village- Shripur Gahar, Police Station- Khanpur, District- Samastipur
5. Shiv Kumar Mishra Son Of Ram Naresh Mishra Resident Of Village- Shripur Gahar, Police Station- Khanpur, District- Samastipur
6. Dai Sundar Devi Wife Of Ram Naresh Mishra Resident Of Village- Shripur Gahar, Police Station- Khanpur, District- Samastipur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Kripa Nand Jha, Advocate
For the State : Mr. Ajay Kumar –I, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 21-06-2017

The petitioner is informant of Khanpur P.S. Case No.133 of 2012 registered under Section 307 and other Sections of the Indian Penal Code against the accused persons.

2. In the present application, he has challenged the order dated 16.9.2013 passed by the then learned Adhoc Additional Sessions Judge III, Samastipur in Sessions Trial No.315 of 2013 arising out of the aforesaid P.S. case whereby he sent back the case under Section 228 of the Cr.P.C. for trial before the Chief Judicial



Magistrate, Samastipur holding therein that no prima facie case under Section 307 of the Indian Penal Code is made out.

3. Learned counsel appearing on behalf of the petitioner submits that Khanpur P.S. Case No.133 of 2012 was registered under Section 307 and other Sections of the I.P.C., police after investigation, submitted charge sheet under those sections, accordingly considering evidence collected during investigation cognizance was taken, after enquiry, the case was committed to the court of Sessions for trial. However, the 3rd Adhoc Additional Sessions Judge, Samastipur disagreeing with the cognizance order sent back the case to the court of Magistrate for trial. Learned counsel submits that allegation is that all accused persons assaulted the informant and others with specific allegation that one of the accused Shiv Kumar assaulted on the head of the informant with a piece of bamboo and hit with such an impact causing fracture in temporal and parietal bone, in serious condition he was admitted and treated in Darbhanga Medical College and Hospital, Darbhanga, so prima facie a case under Section 307 of I.P.C. too is made out and the case is triable by court of Sessions.

4. It is also submitted that by order dated 12.11.2013, this Court has stayed the further proceeding in the court below even after receiving of the said order, charge was framed against accused persons on 18.12.2013.



5. Learned A.P.P. also submits that considering the nature of injury over the head of the informant, it appears a case triable by the court of Sessions as prima facie case under Section 307 of I.P.C. is made out.

7. Earlier notice was sent to the opposite party no.2 in the case and notice was received by the mother of one of the accused so the notice is deemed to be validly served to the accused persons. Learned counsel of opposite party no.2 has filed appearance by filing vakalatnama but no one turned up on behalf of the accused persons.

8. Having considered the submission and on perusal of the record specially the injury in C.T. scan report of head of the informant shows fracture in his right temporal and parietal bone which is a vital part of the body. The impact of assault appears be so severe resulting into fracture of temporal and parietal bone, so prima facie case under Section 307 I.P.C. too is made out. The present case for aforesaid reason is exclusively triable by the court of Sessions. The petitioner has also brought on record a charge framed against the accused persons triable by the Magistrate by order dated 18.12.2013, on the same day the stay order of the further proceeding passed by this Court was received thereafter the case was fixed for evidence. This fact is acknowledged by the subsequent order dated 18.12.2013 of C.J.M., Samastipur, so considering the said aspect of the case, the



order dated 16.9.2013 as well as the order dated 18.12.2013 are set aside.

9. In the result, this application stands allowed.

10. The Chief Judicial Magistrate, Samastipur is directed to commit the case to the court of Sessions as per the law to put the accused persons on trial.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18-07-2017
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