

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4478 of 2015

Arising Out of PS.Case No. -196 Year- 1998 Thana -DARBHANGA SADAR District-
DARBHANGA

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Kameshar Das, S/O Late Bindeshwar Das Resident of vill-Bedipatti,P.S-
Bahadurpur,Distt.-Darbhanga Petitioner.

Versus

1. The State of Bihar
 2. Jeevach Das Son of Sukhdev Das Resident of Vill-Bedipatti,P.S-Bahadurpur,
District-Darbhangha
- Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Adv.

For the Opposite Party/s : Mr. Ajay Kumar Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 03-01-2018

Heard learned counsel for the petitioner and learned A.P.P.
for the State. No one turned up on behalf of opposite party no.2
despite putting appearance in the case.

This application under Section 482 of the Code of Criminal
Procedure has been preferred against the order dated 19.02.2014
passed by the learned Ad hoc Additional District and Sessions Judge-
IV, Darbhanga in Criminal Revision No.277 of 2011, whereby the
learned lower court has allowed the revision preferred against the
order dated 24.08.2011 passed by the learned Judicial Magistrate
under Section 216 of the Code of Criminal Procedure.

It is submitted on behalf of the petitioner that injury no.2
which is said to be grievous in nature and danger to life has not been
inflicted on the vital part of the person of the victim rather on chest



and the said injury is not specifically attributed to the petitioner but the learned lower court without discussing the case on merit and without giving any reason has wrongly found making out of a prima facie case under Section 307 of the Indian Penal Code against the petitioner. It is further submitted that the charge in the case has been framed on 17.03.2001 and all the prosecution witnesses has been examined by the prosecution. Thereafter, on a petition filed by the prosecution for framing of charge under Section 307 of the Indian Penal Code, the same was rejected vide order dated 24.08.2011 by the learned Magistrate finding the same as mala fide and only filed to cause delay in disposal of the case. Being aggrieved with the aforesaid order, Criminal Revision No.277 of 2011 was preferred but the learned lower court set aside the aforesaid order without any basis or reason which is liable to be set aside.

On the other hand, it is submitted by learned A.P.P. for the State that as the doctor has found injury no.2 inflicted on the chest of the informant as fracture of the rib and grievous in nature and dangerous to life, hence the learned lower court considering the aforesaid injury has rightly passed the impugned order finding making out of a prima facie case under Section 307 of the Indian Penal Code as well against the petitioner.

Bahadurpur P.S. Case No.196 of 1998 was instituted by the



police under Sections 447/448/341/323/504/324/325/379/34 of the Indian Penal Code against the petitioner and other accused persons on the basis of written report of one Jeevach Das with the allegation, inter alia, that all the accused persons assaulted the informant by means of lathi, fatha and fists inflicting injury on his chest resulting into fracture of his rib.

From perusal of the injury report, it appears that initially the doctor has opined injury no.2 as abrasion over left side of chest below nipple of the dimension of $\frac{1}{2}$ ' x $\frac{1}{2}$ ' but in the injury report he has opined the injury as grievous in nature showing fracture of rib left chest caused by hard and blunt substance. The said injury has not been caused on the vital part of the person of the informant rather on his chest and also not specifically attributed against the petitioner-Kameshwar Das rather against all the accused persons named in the F.I.R.

Considering the facts and circumstances of the case and number of accused persons, number of injury, part of the person of victim selected for assault and the weapon used in inflicting the said injury, there appears to be no intention to do away with the life of the informant at the hand of the petitioner. Hence no offence under Section 307 I.P.C. is made out against the petitioner. The learned lower court has also not assigned any reason for finding of making out



of the prima facie case under Section 307 I.P.C. against the petitioner and moreover for inflicting the aforesaid grievous injury, the charge under Section 325 I.P.C. has already been framed against the petitioner and other accused persons. Moreso, the case appears to be very old as the charge in the case has been framed on 17.03.2001.

Considering the facts and circumstances aforesaid, I find that the impugned order dated 19.02.2014 passed by the learned lower court in Criminal Revision No.277 of 2011 is bad in law and is liable to be quashed. Accordingly, impugned order passed by learned lower court is quashed and this application is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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