

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35309 of 2018

Arising Out of PS.Case No. -61 Year- 2014 Thana -KISHUNPUR District- SUPAUL

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1. Hari Narayan Sah, Son of Late Raghunandan Sah.
 2. Birendra Sah.
 3. Amrendra Sah.
 4. Dipnarayan Sah All Sons of Shri Harinarayan Sah, resident of Village Chauhatta, P.S.- Kishanpur, District- Supaul.
 5. Mukesh Sah.
 6. Ravindra Sah, Both Sons of Bishnudeo Sah, resident of Village- Hasanpur, P.S.- Chhatapur, District- Supaul.

.... Petitioners

Versus

1. The State of Bihar.
2. Usha Devi, w/o Chandradeo Sah, resident of Village- Chauhatta, P.S.- Kishanpur, District- Supaul.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Girjanand Prasad, Advocate
For the Opposite Party : Mr. Damodar Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3. 25-10-2018 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

The petitioners, in the present case, are seeking quashing of the order dated 11.05.2018 passed by learned Fast Track Court-II, Supaul in Sessions Trial No. 24/2017 arising out of Kishanpur P.S. Case No. 61/2014 dated 06.04.2014 registered for the offence punishable under Sections 341, 147, 148, 149, 323, 324, 504, 307, 354 and 379 of the Indian Penal Code.

Learned counsel for the petitioners submits that while passing the impugned order dated 11.05.2018, the



learned trial court could not appreciate that the police in this case, after investigation, had submitted a final form against petitioner nos. 2 & 3, however, at the stage of taking cognizance the learned Magistrate had taken cognizance of the offences *inter alia* under Section 307 of the Indian Penal Code. It is submitted that the police had not submitted any charge-sheet under Section 307 I.P.C., and, therefore, the learned Magistrate was not justified in taking cognizance of the offences under Section 307 I.P.C.

It is further submitted that this question was raised by the petitioners before this court at the time of challenging the order taking cognizance but then the order was not interfered with and the petitioners were given liberty to take this plea at the stage of framing of charge. It is the grievance of the petitioners that the learned trial court has not considered this aspect of the matter while passing the impugned order.

On the other hand, learned Additional Public Prosecutor has opposed the submission of the petitioners. It is submitted that at the stage of framing of charge the learned trial court's consideration would be different from that of the learned Magistrate while taking cognizance. It



is submitted that on perusal of the impugned order it would appear that the learned trial court has referred the several paragraphs of the case diary and has also perused the injuries report from which the court came to conclude that as there are as many as three injuries on the head of the victim, there are materials available on the record to proceed against the petitioners by framing a charge under various provisions of the Indian Penal Code including Section 307 of the I.P.C. It is submitted that no interference of this court is required at this stage.

Having heard learned counsel for the parties and on perusal of the records, this court finds that the learned trial court has taken note of the submissions of the petitioners, perused the case diary and the injury reports. It is recorded in the impugned order that one Chandeshari Sah had sustained as many as three injuries on head and that was found sufficient to attract Section 307 of the Indian Penal Code.

In the opinion of this court, the materials referred by the learned trial court and the reliance placed thereon by the court at this stage cannot be said to be perverted. If the learned trial court has found from the



materials on the record that three injuries on the head of one Chandeshari Sah were caused and for that reason Section 307 I.P.C. is attracted, at this stage this court would not interfere with the same.

This application has no merit, it is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

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