

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.3805 of 2015

Arising Out of PS.Case No. -14 Year- 2014 Thana -KHUDWAN District- AURANGABAD

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1. Surendra Tiwary @ Sulendra Tiwary
2. Upendra Tiwary @ Upendra Nath Tiwary
Both are sons of Late Janki Tiwary null
3. Madan Tiwary
4. Ajit Tiwary
Both are sons of Narendra Tiwary
All are Resident of village Narho Dihri, P.S-Khudwan, Distt.-Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajendra Prasad Singh, s/o late Jagdeep singh, resident of village -Narho Dihri,
P.S-Khudwan, Distt.-Aurangabad (Bihar)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shakib Ayaz, Advocate.
For the Opposite Party/s : Mr. G.S. Gupta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-08-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 8.12.2014 passed by the learned Judicial Magistrate, 1st Class, Daudnagar, in G.R. No. 318 of 2004 arising out of Khudwan P.S. Case No. 14 of 2014 by which the learned Magistrate took cognizance against the petitioners for the offences under Sections 341, 323 and 307/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and learned counsel for the State.

3. Learned counsel for the petitioners has submitted



that in the instant case no offence under Section 307 Indian Penal Code is made out, but cognizance has been taken by the court below for the offence under Section 307 Indian Penal Code along with Sections 341 and 323 of the Indian Penal Code on the basis of charge sheet submitted by the police. It has further been submitted that there is no any injury caused to the injured, making ingredient of offence under Section 307 of the Indian Penal Code.

4. In the written report it is alleged that on the date of occurrence altercation took place with the informant for measurement of land. It is alleged that petitioners assaulted the informant with bricks, stones, rod etc. The informant sustained injury near his eye. It is further alleged that Surendra Tiwary snatched golden chain and took out cash of Rs.2,500/- from pocket of the informant.

5. The injury report of the informant Rajendra Prasad Singh has been enclosed as Annexure-2 wherein the Doctor has found simple injury on right frontal temporal area of head measuring 2 ½” x 1/6 x 1/8 caused by hard and blunt object. As per the x-ray of skull of lateral view, there was no boney lesion. The injury was found to be simple in nature.

6. From the impugned order it appears that the court below on the basis of charge sheet submitted by the police without looking into the nature of injury sustained by the informant has taken cognizance against the petitioners for the offence under Section 307



Indian Penal Code along with other allied Sections of Indian Penal Code as mentioned in the cognizance order.

7. This Court after looking into the nature of injury sustained by the informant (Annexure-2) and also allegation made in the written report, is of the view that there is no ingredient of offence under Section 307 Indian Penal Code against the petitioners.

8. Therefore, the order of learned Magistrate by which cognizance has been taken against the petitioners for the offence under Section 307 Indian Penal Code is not in accordance with law.

9. Therefore, cognizance taken by the learned Magistrate under Section 307 Indian Penal Code is hereby set aside.

10. The case will however proceed for the offence under Sections 341 and 323 of the Indian Penal Code as mentioned in the impugned order.

11. This Criminal Miscellaneous application is accordingly allowed in part.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14/08/2018
Transmission Date	14/08/2018

