

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.21918 of 2017**

Arising Out of PS.Case No. -191 Year- 2015 Thana -LAKHISARAI District- LAKHISARAI

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1. Balgovind Sharma son of Late Sanichar Sharma  
2. Jitendra Kumar @ Bablu @ Bablu Sharma son of Sri Balgovind Sharma  
3. Sunita Kumari @ Sunita Devi @ Baby Kumari daughter of Balgovind Sharma  
All residents of Mohalla - Kiul Basti, Pachna Road, P.S.-Kabaiya Lakhisarai,  
District - Lakhisarai.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. Pankaj Kumar son of Nageshwar Mandal, resident of Mohalla- Kiul Basti,  
Pachana Road, Lakhisarai, P.O., P.S. and District - Lakhisarai.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Rohit Kumar, Advocate  
For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 28-03-2018**

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed for quashing the order dated 30.03.2017 passed by the learned Additional Sessions Judge-II, Lakhisarai in Session Trial No.220 of 2015 arising out of Lakhisarai (Kabaiya) P.S.Case No.191 of 2015 whereby charge under Section 307 read with 34 of the Indian Penal Code has been framed against the petitioner.

2. In the First Information Report, it is alleged that the petitioner no.1 Balgovind Sharma assaulted the informant with sword targeting his head. Since the informant tried to defend himself, the



sword hit his palm causing grievous injuries. Thereafter, on the order of the accused Balgovind Sharma, the other accused persons badly assaulted the mother of the informant. As a result of the injuries caused, both the informant and his mother were taken to the hospital. It is alleged that while committing the offence, accused Bablu Sharma had also opened fire.

3. After institution of the FIR, the investigating officer investigated the case and found the allegations made in the FIR to be true and, thus, submitted charge-sheet, against the accused persons. On commitment, the learned Sessions Judge having appreciated the materials on record found ingredients of Section 307 read with 34 of the IPC to be made out against the accused persons and, thus, framed charge against them.

4. It is submitted by the learned counsel for the petitioners that there is case and counter case and there is nothing to suggest that the accused persons intended to kill the informant and his mother, and, thus, the charge framed under Section 307 of the IPC against the petitioner is bad.

5. Be that as it may, having seen the nature of the allegations made in the FIR, which were found true in course of investigation, if the trial court has found sufficient ground to proceed with the trial for the offence under Section 307 of the IPC, I see no



illegality in the order impugned passed by the trial court. The defence of the petitioner regarding counter case etc. can be appreciated by the trial court at an appropriate stage. It is not the stage when such defence of the petitioner should be appreciated for holding that the petitioner cannot be tried for the offence under Section 307 of the IPC.

6. Accordingly, the application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Md.S./-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A.       |
| Uploading Date    | 31.03.2018 |
| Transmission Date | 31.03.2018 |

