

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51404 of 2017

Arising Out of PS.Case No. -414 Year- 2014 Thana -JAKKANPUR District- PATNA

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1. Sachida Nand Prasad, Son of Sri Prayag Mahto,
2. Neelam Devi, W/o Sachida Nand Prasad,
3. Ravi Kumar, S/o Sachida Nand Prasad,
4. Rashmi Kumari @ Gudia, D/o Sachida Nand Prasad,
All are R/o Mohalla- Postal Park, Road No.-1, P.S.- Jakkanpur, District-
Patna. Presently residing at Mohalla- Bengali Tola, P.S.- Jakkanpur,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Deena Nath S/o Sukhdeo Prasad, R/o Indira Nagar, Road No.1, P.S.-
Jakkanpur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Avinash Kumar, Adv.
For the Opposite Party No.2: Ms. Namrata Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 17-09-2018

Heard learned counsel for the parties.

The petitioners are aggrieved by the order dated 02.08.2017 passed by the learned Additional District Judge-VII, Patna in Session Trial No.622 of 2016 by which the learned Additional District Judge has been pleased to reject the discharge petition filed by the petitioners under Section 227 of the Code of Criminal Procedure.

Learned counsel for the petitioners submits that from perusal of the case diary particularly paragraph 15 it would appear



that at the instance of the learned Magistrate Section 307 I.P.C. was added in the charge-sheet. It is submitted that the fact that Section 307 I.P.C. has been added at the instance of learned Magistrate came to the notice of the petitioners only when police papers were received. Prior to receipt of the police papers, the petitioners had no reason to understand that cognizance under Section 307 I.P.C. has been taken after the I.O. added Section 307 I.P.C. at the instance of learned Magistrate. Learned counsel has relied upon a judgment of the Hon'ble Apex Court in the case of **Shariff Ahmed & Ors. v. State (NCT of Delhi)** reported in **AIR 2009 SC 2691** and submits that the Hon'ble Apex Court has categorically held that the Magistrate cannot direct the investigating agency to focus on any particular offence.

Learned counsel further submits that even on merit this Court may find that the learned Additional Session Judge has not at all considered the submissions of the petitioners and has simply rejected the application by saying that the petitioners had indulged in abuse as also in giving fists blow and beatings by hockey stick. It is submitted that neither in the case diary nor otherwise any injury report has been brought on record by investigating officer of the case till date. It is submitted that if there is no injury report even to prima facie indicate any beating of



the informant or his wife with an intention to kill, the basic ingredients required to frame the charge under Section 307 I.P.C. are not satisfied.

On the other hand, learned counsel representing the informant submits that the fact that the informant had filed protest petition in the court below would indicate that addition of Section 307 I.P.C. has not been done at the instance of wife of the informant as alleged. Learned counsel further submits that there are materials available on the record to frame charges and the learned Additional Session Judge has committed no wrong by rejecting the application of the petitioners. In course of argument, however, learned counsel admits to the extent that the case diary nowhere mentions about any injury on the person of the informant or his wife. Learned counsel however submits that the informant/his wife were treated in a private hospital and there were injuries.

Having heard learned counsel for the parties, this Court finds that the plea taken on behalf of the petitioners that Section 307 I.P.C. was added at the instance of learned Magistrate is required to be considered by the learned Additional Session Judge by perusing the records and find out as to when police papers were made available to the petitioners. If it is found that



immediately after the police papers were made available to the petitioners, this plea has been taken then in the opinion of the Court the same would not be thrown out at the outset and plea would be required to be considered in the light of the materials available on the record and the judicial pronouncements on the subject. The next argument of the learned counsel that there is no injury on the body of the informant or his wife and in this regard no injury report has been produced by the I.O. would also be required to be considered by the learned court below.

In the facts and circumstances of the case, since there is no such consideration to the issues which have been raised on behalf of the petitioners, the impugned order dated 02.08.2017 is hereby set aside. The matter is remitted back to the court of learned Additional District Judge-VII, Patna to consider the discharge petition afresh on its own merit, but keep in mind the aforesaid views which have been indicated by this Court.

This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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