

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.55224 of 2017

Arising Out of PS.Case No. -434 Year- 2014 Thana -HAJIPUR District- VAISHALI(HAJIPUR)

=====

Binod Kumar S/o Late Chunnu Prasad, R/o Mohalla- Pokhara, Gudri Road, P.O. &
P.S.- Hajipur Town, District- Vaishali.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Soni, Advocate.

For the Opposite Party/s : Mr. Ram Sumiran Roy, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-07-2018

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the informant.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 11.10.2017 passed by the learned Session Judge, Vaishali at Hajipur in Session Trial No. 394 of 2017 arising out of Hajipur Town P.S. Case No. 434 of 2014 whereby and whereunder the petition filed under Section 227 of the Cr.P.C for discharge has been rejected.

3. Learned counsel for the petitioner submitted that no case under Section 307 of the Indian Penal Code is made out even on admitted allegations made in the FIR. He contended that to justify



framing of charge under Section 307 of the IPC an intent to cause death coupled with some overt act in execution thereof must be available on record. As far as the instant case is concerned, the informant has simply alleged that at the instance of the petitioner co-accused Amit Kumar assaulted with something made of iron which hit him on his head as a result of which he fell down and became unconscious and, thereafter, he was taken to hospital for treatment. Had there been any intent to cause death, the accused persons must have repeated the assault especially when there was no intervening circumstances and the victim had fell down and fainted. It is urged that only one grievous injury has been found by the doctor, who examined the informant, and on that basis the petitioner cannot be charged for the offence punishable under Section 307 of the IPC. It is pleaded that at best, it would be a case under Section 324 & 325 of the IPC.

4. Opposing the application, learned counsel for the State submitted that the application of the petitioner was not under Section 228 (1) of the Cr.P.C rather the application was filed under Section 227 of the Cr.P.C seeking discharge from the case. He contended that since the court below has found sufficient ground to proceed against the petitioner, it has not discharged him. He contended that in order to frame charge under Section 307 of the IPC,



it is not essential that bodily injury capable of causing death should have been inflicted. Even if an attempt is made to cause death and no injury is caused, charge can be framed under Section 307 of the IPC.

5. Learned counsel for the informant submitted that immediately after dismissing the application of the petitioner under Section 227 of the Cr.P.C, the court has already framed charge interalia under Section 307 of the IPC against the accused persons and the trial has already proceeded.

6. I have heard learned counsel for the parties and carefully perused the record.

7. It is true that in order to justify framing of charge under Section 307 of the IPC, it is not essential that the bodily injury capable of causing death should have been inflicted and if there is presence of intent to cause death coupled with some overt act in execution of such intent, charge can be framed under Section 307 of the IPC.

8. Since the charges have already been framed and the trial has proceeded, at this stage, I am not inclined to interfere with the order impugned passed by the court below. After the evidences are adduced, the court holding the trial will be in a better position to evaluate if any case under Section 307 of the IPC is made out or not and, in case, the trial court comes to a conclusion that there was lack



of intent to cause death, simply because charge has been framed under Section 307 of the IPC, it would not record conviction under Section 307 IPC rather the conviction would be recorded for a lesser offence like Section 325 IPC.

9. With these observations, the application stands disposed of.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	01-08-2018
Transmission Date	01-08-2018

