IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 5600 of 2015

Arising Out of P.S. Case No.-93 Year-2011 Thana- ITARHI District- Buxar

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Sunil Kushwaha Son of Harihar Kushwaha, R/o Village - Pithanpura, Barahana, P.S. - Itarhi, District - Buxar.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 01-05-2019

Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

> *"That this is an application for quashing the order dated 23.12.2014 passed in S.Tr. no. 338 of 2013, related to Itarhi P.S. Case No. 93 of 2011 passed by learned A.D.J.-IV, Buxar by which learned Court below rejected the petition filed U/S 227 Cr.P.C. on behalf of the petitioner without appreciating the facts and circumstances of the case."*

3. The allegation against the petitioner and 19 other accused is of general and omnibus assault in which various persons on the side of the informant were injured.

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4. Learned counsel for the petitioner submitted that in the FIR itself no weapon is said to be carried by the petitioner and there is specific overt act alleged against the other co-accused by either *Lathi, Danda* or *butt* of the gun, but against the petitioner no such allegation is made and only a vague, general and omnibus allegation of assault by all the persons. It was submitted that even the injury suffered by the victims are simple in nature. Learned counsel submitted that on such vague, general and omnibus allegation, the prosecution against the petitioner is totally unwarranted and would be an abuse of the process of the Court.

5. Learned APP, upon going through the case diary, submitted that the petitioner was a member of the mob which assaulted the victim who has suffered injury. It was further submitted that at this stage, it could be difficult to segregate as to which injury was inflicted by which person and, thus, the petition for discharge has been rightly dismissed by the Court below. He submitted that one witness has stated that the petitioner also had countrymade pistol in his hand. However, on a query of the Court as to even if, it is accepted that the petitioner had a countrymade pistol, though not so stated in the FIR and not stated by any of the witnesses accept for one witness and there being no allegation of either use of the said weapon for firing or even for assault, in the

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background of there being specific allegation against the others who were carrying firearms and are alleged to have assaulted by the butt of the firearm, but against the petitioner there being no such allegation, why he should be made to undergo the rigours of trial, learned APP could not give any answer.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the opinion of the Court, a case for interference has been made out.

7. Admittedly, in the FIR, the petitioner is not alleged to be armed with any weapon. Further, during investigation also, only one person has stated that the petitioner had countrymade pistol in his hand, but none of the other witnesses have stated anything with regard to the petitioner. Even otherwise, the allegation is specific with regard to all other co-accused of them in some way assaulting the victim, either with hard blunt substance in their hand or by the butt of the firearm they were carrying, but no such allegation has been attributed to the petitioner. Thus, on a tenuous reference by one witness that the petitioner was having countrymade pistol in his hand, but there being no allegation of him assaulting anybody, either by firing or even by the butt of the so called countrymade pistol, cannot be a justifiable ground to proceed against the petitioner.

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8. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Itarhi P.S. Case No. 93 of 2011 (S. Tr. No. 338 of 2013), pending before the Court below at Buxar, including all orders passed by the Courts below, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

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