

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8378 of 2015**

Arising Out of P.S. Case No.-105 Year-2013 Thana- GORAIYA KOTHI District- Siwan

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Mukesh Ram @ Mukesh Kumar Ram S/o Rajnath Ram, R/o Village -
Sheikhpura P.S. - Goraiya Kothi, District - Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh and
Mr. Raju Prasad, Advocates

For the State : Mr. Md. Arif, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 22-04-2019

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 31.01.2015 passed in
Goraiya Kothi P.S. Case No. 105/13
corresponding to G.R. No. 2140/13 ld. Chief*



Judicial Magistrate, District Siwan, whereby and whereunder cognizance has been taken for the offences punishable under section 341/323/324/307/504/34 of the Indian Penal Code against the petitioner and order has been passed to issue summon against the petitioner.”

3. The allegation against the petitioner and two others is of attacking the son of the informant in which the petitioner is said to have caught hold of the victim along with another named accused and the third name accused is said to have inflicted knife blow on the left armpit of the victim.

4. Learned counsel submitted that on the said day, he was away in the neighbouring District of Gopalganj in connection with his exam, in support of which copies of the admit card and schedule of the examination have been brought on record to indicate that the examination was held on 28.05.2013 till 5.00 P.M. It was submitted that the police upon investigation has found the contention of the petitioner not being present at the place of the occurrence to be correct, and, thus, he was not sent up for trial, but despite that, the Court below has taken cognizance against him also. Learned counsel submitted that the injury inflicted is also not grievous.

5. Learned APP submitted that the distance between Gopalganj and Siwan is less than one hour and, thus, it is obvious that after finishing of the exam, the petitioner who lives at the



village where the occurrence took place would naturally have come home. It was further submitted that the petitioner appearing at the examination can only be verified at the time of trial and that mere possessing admit card and the schedule of the examination is no proof that the petitioner also actually appeared for the examination. It was further submitted that the injury report is not on record and thus, it cannot be said with certainty, at the present stage, with regard to its nature or whether there was any intention to kill. Learned counsel submitted that as far as the intention to kill is concerned, *prima facie* it appears to be the case, since where two persons catch hold of the victim and the third inflicts knife blow, it cannot be said that they were not aware of the consequences. Learned counsel submitted that the Court below has also noted the statement of various witnesses who have supported the prosecution story and, thus, for the purposes for taking cognizance the Court is required only to see whether *prima facie*, on the basis of materials before it, ingredients of the offence alleged are made out and not any meticulous screening of the evidence of such materials before the Court.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court



does not find any merit in the application and accordingly, the same stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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