

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9771 of 2015

Arising Out of PS. Case No.-41 Year-2011 Thana- BARH District- Patna

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Md. Azad Alam @ Azad Alam, S/o Enamul Haque, R/o Akbarpur, P.S.- Barh,
District- Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Samim Sajid, S/o Md. Sanaullah, Resident of Village- Bajidpur, P.S.- Barh,
District- Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Vijay Kumar Sinha, Advocate
For the Opposite Party/s : Mr.Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 26-06-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner is named accused along with others in connection with Barh Police Station Case No.41 of 2011, registered under Sections 379, 427, 506/34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The petitioner had filed a petition before the learned trial judge under Section 227 of the Code of Criminal Procedure, stating therein that offence under Section 307 of the Indian Penal Code is not made out against the petitioner. Hence, no charge should be framed against the petitioner under Section 307 of the Indian Penal Code.



4. The prayer has been refused by the learned court below, vide impugned order dated 20.01.2015, passed in Sessions Trial No.524 of 2013 by the learned Additional Sessions Judge-3rd, Barh.

5. According to F.I.R., the petitioner and others cut away the crop from the field of the informant and when they were carrying the same on a truck, *Shiv Prasad Singh, Bacchan Das, Salendra Das, Md. Arshad* and *Md. Maniruddin*, the men of the informant stopped them from carrying away the crop. Thereafter, co-accused, *Munna Rai, Shamsad Alam @ Sadhuya* and *Sahzad Alam* fired from their rifle, which caused no injury to anyone. The same is the statement of *Shiv Prasad Singh, Bacchan Das* and others before the Police.

6. While refusing the prayer of the petitioner, the learned court below got swayed away by the fact that causing of injury is not necessary when knowledge or intention of the accused making firing was evident from their act.

7. Evidently, the petitioner was not carrying any firearm or any other arm, nor any other overt act is alleged. Hence, it cannot be prima facie said that petitioner had knowledge or intention to commit murder. Therefore, charge under Section 307 of the Indian Penal Code cannot be framed



against the petitioner. However, the petitioner may be proceed with for other charges and shall face trial in the same trial along with other co-accused.

8. With the aforesaid observation, this application stands *allowed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.06.2019
Transmission Date	28.06.2019

