

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7124 of 2015

Arising Out of PS. Case No.-172 Year-2013 Thana- GHOSI District- Jehanabad

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1. Anil Pandit, Son of Late Sita Ram Pandit
 2. Sunil Pandit Son of Late Sita Ram Pandit
 3. Babita Devi Wife of Sunil Pandit
 4. Sunita Devi, Wife of Anil Pandit All are resident of village - Uber, Police Station - Ghosi in the District of Jehanabad

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar with Mr. Ranjeet Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-04-2019

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

2. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') 1973 for the following relief:

“ That this is an application for quashing the order dated 20.1.2015 passed by learned Sessions Judge, Jehanabad in S.Tr. No. 629 of 2013 (arising out of Ghosi P.S. Case No. 172 of 2013 u/s 341, 323, 504/34 I.P.C.) by which the petition filed on behalf of the petitioners under Section 227 Cr.P.C. has been rejected without considering the material available on record.”



3. However, at the very outset, learned counsel for the petitioners submitted that as the Court is dealing under its inherent power for securing the ends of justice, he would be restricting his prayer to the plea that from the entire allegations made and materials collected during investigation, especially the injury reports, no offence under Section 307 of the Indian Penal Code is made out. Learned counsel submitted that the allegation is general and omnibus of assault in which both sides have been injured. Learned counsel drew the attention of the Court to the fact that for the same occurrence there is a counter case filed by the side of the petitioners being Ghosi P.S. Case No. 173 of 2013, on the same day, under Sections 341/323/504/34 of the Indian Penal Code. Learned counsel submitted that the present case was filed initially under Sections 341, 323 and 504/34 of the Indian Penal Code, but the police submitted chargesheet under Sections 341, 323, 325, 307/34 of the Indian Penal Code. It was submitted that the Court below has also not applied its judicial mind for the reason that just because there may be some injuries on the head, it would not be enough to take cognizance /frame charge under Section 307 of the Indian Penal Code as the very basis of criminal jurisprudence is having of intention to commit such crime. In the present case, it was submitted that as per the FIR itself, the occurrence occurred



on the spur of the moment in which both sides have assaulted each other and it is only a matter of chance as to whose blow hit which part of the body, and it cannot be said that there was intention to kill on the side of the petitioners. Learned counsel submitted that the injury reports also state that the nature of the wounds were simple. However, it was submitted that the blows have also been found on the head region but, the same even if found on the person of the injured would not *ipso facto* justify taking cognizance and framing of charge under Section 307 of the Indian Penal Code.

4. Learned APP submitted that injury has been found on the head also. However, on a direct query of the Court as to how mere existence of injury on the head, that too, not of a very serious nature would, by itself, be sufficient to take cognizance under Section 307 of the Indian Penal Code and frame charge under such section also, by the Court below, learned APP could not justify the same.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out limited to the prayer made by learned counsel for the petitioners with regard to there being no justification in either taking cognizance or framing charge under Section 307 of the Indian Penal Code.



6. As has rightly been submitted by learned counsel for the petitioners, when there is a case and counter case for the same incident, in which the police has submitted chargesheet in both the cases, it is apparent that there was a free-fight between the parties. This, coupled with the fact that as per the FIR of the present case, the incident has happened impromptu and on the spur of the moment without there being premeditation or preplan. This is one aspect of the matter. The other aspect is that in a free-fight, there are chances of getting blows all over the bodies without there being any clear cut and specific intention of the person assaulting so as to cause injury of a nature which can be said to be with the intention of causing death. Thus, in the present case, the Court finds that there cannot be said to be any specific motive of the petitioners to cause injury with the intention to cause death to the person on whom such injury was inflicted. In fact, in a free-fight where both the sides were assaulting each other, it cannot be even said with certainty as to whose blow had hit which person of the other side. Thus, on an overall view, the Court finds that putting the petitioners to trial for a charge under Section 307 of the Indian Penal Code would not be just and proper.

7. Accordingly, the application stands disposed off modifying the charge framed against the petitioners in Ghosi P.S.



Case No. 172 of 2013 (S.Tr. No. 629 of 2013) and restricting it to
Sections 341,323,325/34 of the Indian Penal Code.

(Ahsanuddin Amanullah, J)

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