

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11334 of 2015

Arising Out of PS. Case No.-127 Year-2012 Thana- CHAPRA MUFFASIL District- Saran

1. Shukdeo Prasad S/o Late Dwarika Prasad
2. Anil Kumar S/o Shukhdeo Prasad
3. Durgesh kumar S/o Shukhdeo Prasad. All resident of Village- Ghaeghta, P.S.- Chapra Muffasil, District- Saran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ranjeet Kuamr S/o Jai Ram Singh. Resident of Village- Gheghtha, P.S.- Chapra Muffasil, District- Saran at Chapra.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Chandra Mohan Jha, Advocate
For the Opposite Party/s : Mr.Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 26-06-2019

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

2. The petitioners are F.I.R. named accused of Chapra Muffasil Police Station Case No.127 of 2012, corresponding to Sessions Trial No.277 of 2013.

3. The petitioners had filed a petition under Section 228 of the Code of Criminal Procedure, stating therein that no case under Section 307 of the Indian Penal Code is made out and others offences alleged against the accused persons are triable by a court of Judicial Magistrate. Hence, the matter be remitted to the court of Judicial Magistrate-1st Class for trial.



4. The prayer has been refused by the impugned order dated 18.02.2015, which is under challenge in this application under Section 482 of the Code of Criminal Procedure.

5. According to F.I.R., quarrel started between the informant and the named accused persons for trivial dispute arising out of land dispute. In the meantime, petitioner, *Shukdeo Prasad* brought a licensee gun from his house and handed it over to petitioner, *Anil Kumar*. Thereafter, petitioner, *Durgesh Kumar* caught the hand of the informant and *Anil Kumar* fired from his gun, causing injury to the informant.

6. Submission of learned counsel for the petitioners is that since injury was found at the lower limb of the informant, it cannot be said that the person who made firing was having knowledge or intention to commit murder.

7. Knowledge and intention could be gathered from the facts and circumstances of the case. If during course of quarrel, a person brings a gun from his house his intention is evident. The person who caught the injured and fired at the injured were also carrying the same intention, even if no injury is caused. In this case injury has been caused. Hence, in my view the case is triable by the court of Sessions and probability and improbability of the



prosecution case would be examined only at the stage of trial.

Accordingly, this application stands *dismissed*.

(Birendra Kumar, J)

abhishek/-

AFR/NAFR	NAFR
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