

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1634 of 2017

Arising Out of PS. Case No.-160 Year-2013 Thana- MASHRAK District- Saran

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1. Shayam Narayan Singh, son of Durga Chaudhur
 2. Ramawatar Chaudhar, son of Late Ramjee Chaudhur
 3. Shriniwas Chaudhur, son of Shivjee Chaudhur, all residents of village- Ghoghiya, P.S. Mushrakh, District-Saran at Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Tiwary
For the Opposite Party/s : Mr. Shyameshwar Dayal

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 08-03-2019 Supplementary affidavit has been filed on behalf of

petitioners, taken on record.

Petitioners, who happens to be one of the accused relating to Sessions Trial No.674 of 2015 arising out of Mashrakh P. S. Case No.160 of 2013, pending before the Additional District & Sessions Judge-6th, Saran at Chapra is aggrieved by an order dated 27.09.2016, whereby and whereunder prayer having so made under Section 228(1)(A) of the Cr.P.C. at their end has been rejected by the learned lower Court.

In order to justify such plea, it has been submitted that the order impugned is bad in light of the fact that the learned lower Court failed to see whether there happens to be presence



of prima facie, even weaker to prima facie materials justifying the applicability of Section 307 of the I.P.C. in the background of the fact that neither there was an intention at the end of the petitioners along with others nor knowledge that the act whereunder the informant was assaulted, would commit her murder. Putting stress thereupon, it has been submitted that there happens to be simple allegation that while informant was passing through the field of the petitioners, provoked, whereupon they gave fist blow over face of the informant causing injury over her nose and in likewise manner, Gulteni Chaudhur assaulted with fatta while Sri Niwas Chaudhur snatched away Rs.3,000/-, Ramawtar Chaudhur snatched away golden chain. So, it was mere a case of simple marpit, even if accepting the prosecution version for the present purpose. In order to buttress his plea, the learned counsel for the petitioners has relied upon *A.I.R. 2019 SC 314* (Champa Lal Dhakar v. Naval Singh Rajput and others).

The learned Additional Public Prosecutor opposed the prayer.

It is needless to say that at the stage of framing of charge, meticulous examination of the materials is forbidden and in likewise manner, defence of the accused. Furthermore, by



concurring judicial pronouncement, more particularly in ***Amit Kapoor vs. Ramesh Chander and another reported in 2012 (9) SCC 460***, the Hon'ble Apex Court has observed:-

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of [Section 228](#) of the Code, unless the accused is discharged under [Section 227](#) of the Code. Under both these provisions, the court is required to consider the ‘record of the case’ and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of [Sections 227](#) and [228](#) of the Code. [Section 227](#) is expression of a definite opinion and judgment of the Court while [Section 228](#) is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach



which is impermissible in terms of [Section 228](#) of the Code.

That at the stage of framing of charge the consideration of materials should be weaker than a prima facie case. However, during consideration of the same, the facts of the individual case is also to be seen superficially in order to trace out presence of ingredient to justify applicability of particular penal provision. While exercising the same, it has been found that during course of passing through the land of accused/petitioners by the informant, annoyed them whereupon she was assaulted with fist over her nose as well as fatha (Baboo) over her body, could not suggest an intention nor divulge knowledge. In ***Champa Lal Dhakar v. Nawal Singh Rajput and others reported in A.I.R. 2019 SC 314*** (Supra), it has been held:-

“5. Heard learned counsel appearing on behalf of the parties at length. We have also perused and considered the material on record, more particularly, the injuries sustained by the original Complainant. Considering the material/evidence on record, we have noticed that the complainant sustained injuries on the nose and fracture of the nasal bone was found. That the case may fall within the grievous hurt, but it cannot be said that even, prima facie, a case is made out for the offence under Section 307 of the IPC. Section 307 of the IPC reads as under:

"307. Attempt to murder.- Whoever does any act with such



intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned."

Accordingly, the order impugned is set aside. Petition is allowed. Matter is remitted back to the learned lower Court for reappraisal of the issue in hand in the background of aforesaid finding.

(Aditya Kumar Trivedi, J)

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