

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1200 of 2017

Arising Out of PS. Case No.-28 Year-2012 Thana- PARAIYA District- Gaya

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1. Chamela Devi and Ors W/o Ramashish Singh
 2. Amit Kumar @ Bablu, S/o Birendra Singh
 3. Ranjit Kumar S/o Upendra prasad All Resident of Village-Jamalpur, P.S.-Paraiya, District-Gaya

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Ramkrit Prasad S/o Late Ramdhani Mahto All Resident of Village-Jamalpur, P.S.-Paraiya, District-Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Singh
For the Opposite Party/s : Mr. Ataur Rahman

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 25-01-2019 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

Petitioners have prayed for quashing of the order dated 25.11.2016 passed by the Additional Sessions Judge-IVth, Gaya in Sessions Trial No.316 of 2016/ 218 of 2016, whereby and whereunder prayer having at the end of the petitioners purported to be under Section 227 of the Cr.P.C. has been rejected.

Before coming to the facts of the case, it looks desirable to incorporate the principle guiding the appreciation of materials during course of framing of charge/ discharge as held in *Amit Kapoor vs. Ramesh Chander and another reported in*



2012 (9) SCC 460, it has been held that the materials to be considered at the stage of framing of charge, would be even weaker than a prima facie case. For better appreciation Paragraph-17 is quoted below:-

“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.

From the facts of the case as well as after going through the evidence available on the record, it is evident that there happens to be specific disclosure at the end of the prosecution that the respective injured were assaulted with an intention to kill. Nature of injury as per requirement of Section 307 I.P.C. is immaterial as there should be only hurt, which is defined under Section 319 of the I.P.C. As per definition of hurt, nature of the injury is not at all required.

Thus, there happens to be no cogent ground to interfere with the order impugned, accordingly, dismissed.

(Aditya Kumar Trivedi, J)

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