

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50490 of 2018

Arising Out of PS. Case No.-48 Year-2012 Thana- UDAKISHUNGANJ District- Madhepura

1. Rupesh Jha, son of Mankhushi Jha
 2. Pushpam Jha @ Pushpam Kumar Jha, son of Lakhhan Jha @ Lakkhan Jha
 3. Munna Jha, son of Sundar Kant Jha
 4. Sundar Kant Jha, son of late Jiveshwar Jha
- All are resident of village- Navtol, P.S. Uda- Kishunganjd, District, Madhepura

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Surendra Kumar Jha @ Gopal Jha, S/o late Shyam Sundar Jha
resident of village, Navtol, P.S. Uda- Kishunganj, District, Madhepura

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anant Kumar-1
For the Opposite Party/s : Mr. Anand Kishore Choudhary

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 10-12-2019

Heard parties.

2. This criminal miscellaneous petition has been filed under Section 482 of Cr.P.C. for quashing the order dated 20.6.2018 passed by learned Sessions Judge, Madhepura passed in Criminal Revision No.44/2017 by which the learned court below has dismissed the revision petition of petitioners and affirmed the order dated 10.11.2016 passed by learned Additional Sessions Judge-II, Madhapura in sessions trial no.87 /2013 arising out of UdaKishanganj P.S. Case no.48/12 by which the petition filed by petitioners under Section 228 of



Cr.P.C. was rejected.

3. Informant has alleged in his fardebyan upon which FIR was drawn that on 22.5.2012 at about 9 a.m. while he was going to the house of his younger brother, FIR named accused petitioners variously armed with deadly weapons surrounded him and at the instigation of accused Sunderkant Jha to kill him, all accused persons started assaulting him as a result of which, he sustained injuries on both of his hands, head and back and as he was fleeing away accused Rupesh Jha fired upon him but he luckily escaped.

4. On the basis of said allegation, FIR was registered and after investigation, police found the case to be true and submitted charge-sheet against the petitioners upon which court took cognizance of the offence against the accused petitioners and charges were framed under Sections 307 and other Sections of IPC against the accused petitioners.

5. A petition under Section 228 (I) of Cr.P.C. was filed before the trial court stating therein that no offence under Section 307 is made out as no firearm injury has been found on the person of informant. There was no intention to kill him. Injuries found were simple in nature.

6. The trial court has observed that although the injury



is simple in nature but there is allegation of firing made by one of the accused which was found true during investigation as such there was intention and motive of accused petitioners to commit attempt to murder, as such, offence under Section 307 is made out and rejected the petition filed under Section 228(I) of Cr.P.C., against which petitioners preferred revision before the District Judge which was also dismissed by the District Judge. The revisional court has observed that on perusal of lower court case records and case diary, it appears that in para 7, 11, 12 and 65 of case diary, all the witnesses examined during investigation have stated that Rupesh Jha fired upon the informant by rifle but he escaped luckily. Witnesses have also stated that accused petitioners assaulted the informant by dabia and other deadly weapons and as such, offence under Section 307 IPC is made out and the trial court has rightly framed the charge under Section 307 of IPC as the intention of the accused committing the crime is the determining factor for framing the charge and not the nature of injury and dismissed the revision petition filed by petitioners.

7. After hearing the parties and considering the materials available on record as well as perusing the orders passed by the trial court as well as revisional court, who after



considering the case diary has found that there are sufficient material for framing charge under Section 307 of the IPC, as such, this Court under its inherent jurisdiction is not inclined to interfere in the orders passed by the court below and accordingly, the criminal miscellaneous petition is dismissed. Moreover, the charges can be altered at any time before the judgment, as such, no prejudice is caused to accused petitioners merely by framing of charge under Section 307 of IPC against them.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.12.2019
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