

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 3892 of 2015

Arising Out of P.S. Case No.-36 Year-2008 Thana- BASANTPUR District- Siwan

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1. Kanhaiya Prasad Son of Late Kewal Prasad.
 2. Manoj Kumar Son of Shree Kanhaiya Prasad.
 3. Sanoj Kumar Son of Shree Kanhaiya Prasad.
- All are residents of Village Lakri Tola, Madhavpur, Police Station Basantpur, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Durga Prasad Son of Late Thag Prasad, resident of Village Lakri Tola, Madhavpur, Police Station Basantpur, District Siwan.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Satyanand Shukla and Mr. Rama Nand Poddar, Advocates
For the Opposite Party/s	:	Mr. Umesh Mishra, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 07-05-2019

Heard learned counsel for the petitioners; learned APP
for the State and learned counsel for the opposite party no. 2.

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

*“That this is an application for quashing
order dated 18.11.2014 passed in Trial No. 329 of
2013 “Basantpur Police Station Case No. 36 of
2008 passed by learned Additional Sessions Judge
4th Siwan by which the learned Additional Sessions
Judge 4th Siwan refused the prayer of the
petitioners for discharging them from the offence*



alleged under Section 307 of the Indian Penal Code.”

3. The allegation against the petitioners is of assault with the intention to kill by *Labda, Lathi* and *Rod*.

4. The Court below upon submissions of charge sheet took cognizance under Sections 341, 323, 325, 307 and 379/34 of the Indian Penal Code. The petitioners filed petition under Sections 227 and 228 of the Code praying for their discharge under Section 307 of the Indian Penal Code. The same having been rejected has resulted in filing of the present application.

5. Learned counsel for the petitioners submitted that from the FIR, except for a bald allegation that the assault was with the intention to kill, nothing further has been stated. It was submitted that even during investigation, except for the statement of some of the persons examined during the investigation by the police who have only stated that the assault was with the intention to kill, no material has come to justify taking of cognizance under Section 307 of the Indian Penal Code. It was submitted that even the injury report discloses simple injury caused by hard, blunt substance, as the four injuries on the person of the informant were lacerated swelling below the patella of knee; lacerated wound on left elbow; lacerated wound on right forearm and swelling on back



and the opinion of the doctor is that all have been caused by hard blunt substance.

6. Learned counsel submitted that had there been intention to kill, there would have been blows on the vital parts to ensure that the informant was killed, but there being only general assault, even if it is accepted that the petitioners did assault, there cannot be any charge under Section 307 of the Indian Penal Code, which envisages that the persons so charged, did so with the intention or knowledge that by such act death would be caused. It was submitted that in the present case, such intention is clearly not made out and rather from even the allegations the only thing which can be made out is that the intention was to assault and cause injury on the informant, but it was never to kill, for the injury is on the elbow, back, knee and forearm, i.e., non vital parts of the body.

7. Learned APP submitted that in the order impugned, the Court has referred to various paragraphs of the case diary where the witnesses have stated that the informant has assaulted with intention to cause death. However, on a direct query of the Court to learned APP, to point out from the case diary, copy of which has been received and is available with the learned APP, to point out as to on what basis such intention has been alleged, except for the bald statement that the assault was with the intention



to cause death, learned APP fairly submitted that no such inference can be drawn as there was no material to show the same and only bald statement of witnesses saying that the petitioners had assaulted with intention to cause death is available in the case diary. He also did not controvert the fact that in the case diary, at paragraph no. 32, the injury report has been detailed which shows injury only on the knee, forearm, elbow and back, being caused by hard, blunt substance.

8. Learned counsel for the opposite party no. 2 submitted that the petitioners were waiting for the informant with pre-mediated mind to kill and in furtherance of their intention had mercilessly assaulted the informant who received injuries, rightly the Court has taken cognizance under Section 307 of the Indian Penal Code and the petition for discharge has been rejected. However, on a direct query of the Court to learned counsel for the opposite party no. 2 as to how such offence under Section 307 of the Indian Penal Code is made out when there is only a lacerated wound on the left forearm, back portion of the body, elbow and knee to demonstrate that the intention was only to beat up the informant, cognizance/ charge under Section 307 of the Indian Penal Code was justified, learned counsel could not meet the query of the Court.



9. 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.

10. Both, from the FIR as well as what has come during investigation, the only material available is the opinion of the witnesses that the assault by the petitioners was with the intention to kill. The Court would not believe or rely upon just a bald statement relating to intention and would give weightage to the materials which may indicate such motive. In the present case such material is the injury report, which also reflects the conduct of the petitioners. Thus, the injury report indicating only minor injury on the left forearm, below the patella (knee) on the leg, left elbow and swelling on the back; such injury can by no stretch of imagination indicate the intention to kill. Moreover, even the informant in the FIR has stated that the assault was on the waist, both hands, left leg and right shoulder. The Court, thus, is convinced that based on such allegations in the FIR as well as the materials collected during investigation by the police and the injury report, would not justify either taking of cognizance or the petitioners facing trial under Section 307 of the Indian Penal Code.

11. Accordingly, the application is allowed. The taking of cognizance under Section 307 of the Indian Penal Code against



the petitioners by the Court below in Basantpur PS Case No. 36 of 2008 (Trial No. 329 of 2013) is set aside. However, the case shall proceed with regard to the remaining sections under which cognizance has been taken against the petitioners.

12. The papers received from the Court below be returned forthwith.

(Ahsanuddin Amanullah, J.)

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