

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12904 of 2016

Arising Out of PS. Case No.-170 Year-2014 Thana- NAGARNAUSA District- Nalanda

Baby Laxmi Bharti D/o Sri Rajesh Kumar, resident of Village- Bishunpur,
Police Station- Nagarnausa, District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ashirbad Yadav, son of Ramashish Yadav
3. Ramesh Yadav, son of Mahesh Yadav
4. Nitish Kumar, son of Sohaban Yadav
5. Ramashish Yadav
6. Sohaban Yadav Both sons of Late Ram Kishun Yadav
7. Shivji Yadav
8. Rajendra Yadav
9. Ashok Yadav
10. Ram Pravesh Yadav All sons of Late Ram Babu Yadav
11. Suraj Yadav
12. Mahesh Yadav Both sons of Late Raja Yadav
13. Mukesh Yadav son of Rajendra Yadav
14. Amrik Gope, son of Tenny Gope All resident of Village- Bishunpur, Police Station- Nagarnausa, District- Nalanda.
15. Manish Kumar, son of Dinesh Yadav, resident of Village- Hari Bigha, Police Station- Hilsa, District- Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr.Adv
For the State	:	Mr.Anuj Kumar Shrivastava, APP
For the O.P. Nos.2 to 14	:	Mr. Pankaj Kumar, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 03-07-2019

Heard learned counsel for the parties.

2. The petitioner is informant of Nagar Nausa P.S.Case
No.170 of 2014 registered under Sections 341,323,354A, 504,506
and 34 I.P.C.against opposite party Nos.2 to 15. After investigation



of the case, the police submitted chargesheet under Sections 341, 323, 324, 307, 354A, 504, 506/34 I.P.C. Cognizance was accordingly taken and the case was committed to the court of sessions as offence under Section 307 I.P.C. is triable exclusively by a court of sessions.

3. By the impugned order dated 24.02.2016 passed in Sessions Trial No.233 of 2015 arising out of the aforesaid case, the learned A.D.J.-I, Hilsa remitted the matter back for trial before the learned Judicial Magistrate-1st Class, Hilsa on the ground that no offence triable exclusively by a court of sessions is made out. Such power was exercised under Section 228 of the Code of Criminal Procedure.

4. Grievance of the petitioner against the impugned order is that while exercising the power under Section 228 Cr.P.C. , the learned court below considered the defence of the case inasmuch as the land dispute between the parties as reason for false implication. The learned court below further considered the nature of the injury found by the Doctor on injured Rajesh Kumar and also took into consideration that in the event of trial by a court of sessions, the accused or the prosecutor would loose the right of appeal before the sessions court.



5. Contention is that the aforesaid cannot be a consideration to remit back the case if sufficient material is disclosed in the FIR. Reliance has been placed on the judgment of the Hon'ble Supreme Court in **Amit Kapoor Vs. Ramesh Chander & Anr**, reported in **(2012)9 SCC 460**. Before advertng to the facts of this case, the provisions of Section 228 Cr.P.C. requires to be recapitulated.

228. “Framing of charge.-(1) *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-*
(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;
(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.
(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be



read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

6. According to first information report, opposite parties, Ashirbad Yadav, Ramesh Yadav and Nitish Kumar and a relative of Mahesh Yadav taking advantage of loneliness attempted to outrage the modesty of the informant. The informant made alarm. On that, uncle, aunt, mother and father of the informant came there, injury with iron rod at the head of the father of the informant was caused. Other family members were also assaulted. Thereafter, some other co-accused also came and they participated in the occurrence. The Doctor who examined Rajesh Kumar found a lacerated wound on the scalp. An incised wound on post frontal of scalp. The injury Nos.1 and 2 crossed each other and the patient was referred for C.T. scan. Nothing abnormal was found in the C.T. scan. Injury No.3 was abrasion below the knee and injury No.4 was abrasion at the foot. Injury Nos. 1,3 and 4 were caused by hard and blunt substance and injury No.2 by a sharp substance.

7. There is no allegation in the FIR that anyone caused injury by sharp weapon nor there is allegation in the FIR as to who had caused injury at the head of Rajesh Kumar. Unless there is specific allegation against anyone to have caused injury at



the head of Rajesh Kumar, it cannot be assumed that all the members of the accused side there carrying knowledge of chances of commission of murder. In absence of specific allegation against anyone, the charges cannot be framed with the help of Section 149 I.P.C. or Section 34 I.P.C. Therefore, even if it is found that the reasons of the learned court below for remitting back the trial to the learned Magistrate are not acceptable on the merit of the case, the impugned order cannot be faulted with. There is no merit in the reasoning of the learned Trial Court that the party would loose a chance of appeal before the court of sessions nor there is any merit in the reasoning of the learned Trial Court that the allegation arises out of a dispute for Rasta, however, other considerations based on material on the record cannot be challenged as perverse one.

8. In the case of **Amit Kapoor** aforesaid, the issue before the Hon'ble Supreme Court was whether even suspicion was sufficient to frame charge. In this case, the issue is not that suspicion is there to frame charge rather apparent material is that charge under Section 307 I.P.C. cannot be framed against individual accused and unless charge under Section 307 I.P.C. is framed against individual accused others cannot be roped to face trial under Sections 307/149 I.P.C. Therefore, case of **Amit**



Kapoor is not applicable in the present facts and circumstances of the case.

9. The impugned order requires no interference for the reason aforesaid. Hence, this application stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.07.2019
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