

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33323 of 2011

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Mahanth Vikram Das son of Raksha Mishra, Chela of Late Laxman Das,
Resident of Village- Lakhanipur- Johari Daih Math, P.O. Paharpur, P.S.
Paharpur, District- East Champaran (Motihari).

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sanjay Singh, Son of Birendra Singh, Resident of Village- Lakhanipur, P.S.
Paharpur, District East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailendra Kumar Tiwary, Advocate
For the Respondent/s : Mr. Md. Arif, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-01-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 for the following relief:

*“That, this is a petition for quashing the
cognizance of case under section 302, I.P.C. and
25(1-8)a 26/35/27 arms Act, order dated 5.03.2011
passed by the learned Chief Judicial magistrate,
Motihari in Trial Case No. 4370/2011 arising out
of Paharpur P.s. case no. 171/09 of Section 307
I.P.C. read with section 25(1-B) A on 26/35/27
Arms Act.”*

3. Learned counsel for the petitioner submitted that he is
innocent and has been falsely implicated. It was further submitted
that no injury has been caused to anybody. Learned counsel
submitted that the court below having taken cognizance under



various sections, including Section 302 of the Indian Penal Code, clearly shows that the court has not applied its judicial mind while taking cognizance for the reason that there has been no death but still cognizance has been taken under Section 302 of the Indian Penal Code and also charge sheet was not submitted under the said sections. It was submitted that at best, it is a case of 307 of the Indian Penal Code but instead the court has taken cognizance under Section 302 of the Indian Penal Code also.

4. The Court, upon such submission, perused the order impugned dated 05.03.2011 by which cognizance has been taken. From the same, it transpires that there is some ambiguity with regard to the section under which cognizance has been taken for the reason that at first glance the figure seems to be '302'. However, if the Court reads the whole document it would demonstrate that the person who has written the order writes the digit '7' with a cut across the middle. Thus, in such background, if the original handwritten document is seen, even the case number i.e., Paharpur 171/09, at first glance, appears to be 121/09.

5. In the aforesaid background, it is obvious that actually at both the places, i.e., in the case number, Paharpur-171/09 has been written and not 121/09. Similarly, in the body of the order the same can be read as '307' also as it has been written in a flow with



a cut across number '7', as has been written in the number of the police case at the top. Thus, the Court finds that only by way of a clarification it would suffice that the order dated 05.03.2011 discloses taking cognizance under Section 307 of the Indian Penal Code and not 302 of the Indian Penal Code. As a result, obvious consequences shall follow.

6. At this juncture, learned counsel for the petitioner submitted that the application be disposed off with liberty to raise all the points available to him at the time of framing of charge.

7. Having regard to the aforesaid, the application stands disposed off with liberty aforesaid and also the clarification relating to cognizance having been taken under Section 307 of the Indian Penal Code and not 302 of the Indian Penal Code.

8. If such an application is filed at the appropriate stage, the court below shall consider the same, in accordance with law, without being prejudiced by the present order.

9. Documents, if any, sent by the Court below, be returned forthwith.

(Ahsanuddin Amanullah, J)

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