

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1740 of 2019**

Arising Out of PS. Case No.-809 Year-2013 Thana- EAST
CHAMPARAN COMPLAINT District- East Champaran

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1. Nasarul Haque, son of Late Jamil Akhtar
2. Khushbuda wife of Nasrul Haque
3. Najama Khatoon, wife of Emamul Haque
All resident of village–Karsahia, P.O. and P.S. Dhaka, District East Champaran
4. Nargis, wife of Seikh Guddu, resident of Village Bakhri, P.O. + P.S. Dhaka, District East Champaran
5. Nasrin wife of Md. Motin Alam @ Md. Motin, resident of village Oraiya, P.O. and P.S., District East Champaran

... .. Petitioners

Versus

1. The State Of Bihar
2. Manjarul Haque, son of Late Jamil Akhtar,
Resident of village–Karsahia, P.O. + P.S. Dhaka, District East Champaran

... .. Opposite Parties

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Appearance :

For the Petitioners : Mr. Pravin Kumar
Mr. Santosh Bharti, Advocates
For the State : Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH
KUMAR**

ORAL ORDER

2 18-11-2019 Heard Mr. Pravin Kumar learned Advocate for the

petitioners and Mr. Jharkhandi Upadhyay, learned APP for

the State.

The petitioners seek quashing of the order dated

28.09.2018 passed by learned 7th Additional Sessions Judge,



Motihari, East Champaran in Sessions Trial No. 260 of 2018 arising out of Complaint Case No. 809-C of 2013 whereby their application referred under Section 228 of the Code of Criminal Procedure has been rejected.

It has been submitted on behalf of the petitioners that so far as they are concerned, there is no accusation of assaulting the lady who aborted. In fact, the prosecution version, it has been argued, is absolutely clear that some other accused persons assaulted the wife of the complainant after dashing her down on the ground by fists and slaps. According to the prosecution version, the wife of the complainant remained under treatment of a doctor and ultimately she aborted.

Learned Advocate for the petitioners submits that in the absence of any accusation against the petitioners of having assaulted the wife of the complainant, no offence under Section 313 of the IPC could be said to have been made out. The other accused persons are alleged to have assaulted the wife of the complainant while she was in the family way.



Since the offence under Section 313 of the IPC is not made out against other accused persons and is triable by the Court of Sessions, it could not have been possible for the court below to have relegated the entire case or the individual cases of petitioners to the court of the Magistrate only because other offences alleged against them are triable by the court of the Magistrate. In case during the trial, it is found that the petitioners are not to be blamed for abortion, necessary orders could be passed on that ground alone. The petition under section 228 of the Cr.P.C. on behalf of the petitioner but could not have been allowed.

This Court finds no fault with the order passed by the learned court below in refusing to allow the petition under Section 228 of the Cr.P.C.

The petition has no merit and therefore the same is dismissed.

(Ashutosh Kumar, J)

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