

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.238 of 2020

Arising Out of PS. Case No.-336 Year-2019 Thana- KISHANGANJ District- Kishanganj

1. AARIF KHAN @ SANU Son of Nasim Khan Resident of Village - Thakurganj, P.S.- Thakurganj, Distt - Kishanganj.
2. Mustafa @ Gulam Mustafa @ Md. Gulam Mustafa Son of Late Tamizuddin Resident of Village - Baluchuka, P.S.- Gopalpur, Distt - Uttar Dinajpur (West Bengal)

... .. Petitioners

Versus

The State of Bihar

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Radha Mohan Singh, Advocate
For the Respondent/s : Mr.Vinod Shanker Modi, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 27-02-2020 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioners in this case are aggrieved by and dissatisfied with the order dated 29.11.2019 passed in Sessions Trial No. 149 of 2019 by which the learned Additional Sessions Judge II, Kishanganj has been pleased to reject the application under Section 228 of the Cr.P.C. and the application under Section 216 of the Cr.P.C. filed on behalf of the petitioners.

It appears on perusal of the impugned order that while the Trial No. 149 of 2019 was progressing and out of 8 prosecution witnesses, five witnesses have already been examined, the petitioners filed two applications before the trial court. The first application was filed under Section 228 Cr.P.C.



with a prayer that after converting the charge under Section 384 IPC record be sent for trial to the court of learned Chief Judicial Magistrate. In the another application a prayer was made that from the evidences available on the record particularly the evidence of five prosecution witnesses, it would appear that no charge under Sections 307 and 333 IPC may be framed against them.

Learned counsel for the petitioners has assailed the impugned order. It is his submission that the learned Additional Sessions Judge II, Kishanganj could not appreciate that the charge could have been altered at any stage of the trial and as such the application under Section 216 Cr.P.C. was required to be considered keeping in view that the prosecution witnesses had made some contradictory statement in course of trial and a consideration thereon would suggest that there was no material to frame charge under Sections 307 and 333 Cr.P.C.

On the other hand, learned counsel for the State has opposed this application. Attention of this Court has been drawn towards the depositions of prosecution witnesses as contained in Annexure '7' and it has been submitted that the injured police constables have narrated the ordeals which they have faced and that stones were thrown upon them causing injuries on their



body.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the trial out of 8 witnesses, five have already been examined. This Court would not go into the merit of the depositions of the prosecution witnesses at this stage because such attempts on the part of this Court may influence the course of trial, the court would only refer that at this stage it would not be just and proper for this Court to go into the contradictions in the statement of prosecution witnesses.

The materials available on the record particularly the deposition of the prosecution witnesses as contained in Annexure '7' thus, show that they have made statement in course of trial that when the Police party had gone to arrest one Gulam Mustafa who was absconding in any case, the Police party was attacked and some of them suffered injuries.

On the face of such statement of the prosecution witnesses available on the record, if the learned trial court has refused to accept the submission of learned counsel for the petitioners to alter the charge from that of Sections 307 and 333 Cr.P.C. to one under Section 384 IPC, this Court finds no illegality much less any perversity in the impugned order.



This revision application has no merit. It is dismissed
accordingly.

(Rajeev Ranjan Prasad, J)

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