

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86294 of 2019**

Arising Out of PS. Case No.-59 Year-2017 Thana- SHEIKHOPUR SARAI District-
Sheikhpura

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BALMUKUND YADAV @ RAVI KANT Son of Barnarsi Prasad Yadav
Resident of Village- Kare, Police Station- Sheikhpura, District- Sheikhpura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Bipin Kumar

For the Opposite Party/s : Mr.Sanjay Kumar Tiwary

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER**

2 06-01-2020 This application has been filed for quashing the order dated 02.09.2019 passed by the learned Additional Sessions Judge -I, Sheikhpura in S.T. No. 69 of 2017 arising out of Sheikhopur Sarai P.S. Case No. 59 of 2017, by which, the petition filed by the petitioner under Section 227 Cr.P.C. for discharge has been dismissed.

Prosecution case in short in that the Officer In-charge of Sheikhopur Sarai recorded his self statement that on 27.05.2017 during patrolling, he got secret information that the accused of the Sheikhpura P.S. Case No. 16 of 2017, namely, Balmukund Yadav is coming to his village and on the basis of the said information, informant along with other police force reached near the Kanchan Gas Agency and started checking. After some time, one person was seen coming on motorcycle, who after seeing the police tried



to flee away but was caught and he disclosed his name as Balmukund Yadav @ Ravi Kant and from him three mobiles and one motorcycle was seized. It is also alleged that thereafter, two persons came there and they along with accused Balmukund Yadav started to scuffle with the police, in which, one A.S.I. sustained injury.

On the basis of the above self statement, Sheikhopur Sarai P.S. Case No. 59/2017 has been registered under Sections 224, 225, 341, 323, 353, 307/34 of the Indian Penal Code and police after investigation submitted chargesheet against the petitioner in the above sections. Later on cognizance of the offence has been taken by the learned Magistrate.

It further appears that after commitment of the case, the petitioner has filed a petition under Section 227 Cr.P.C. for discharge in the case as no case is made out against him and it appears that learned Trial Court has rejected the said petition vide order dated 02.09.2019.

Submission of learned counsel for the petitioner is that no case is made out under Section 307 of the Indian Penal Code on the basis of the allegations made in the F.I.R. or the materials collected during the course of investigation but the learned Trial Court has not considered the same and dismissed the petition filed by the petitioner under Section 227 for discharge.



Heard learned A.P.P. also.

Having heard both sides, from perusal of the record, it appears that the matter requires further consideration by the learned Trial Court at least on the point of allegation under Section 307 of the Indian Penal Code as it is apparent from the F.I.R. itself that there is no allegation against this petitioner of assaulting anyone.

Considering the above facts, order dated 02.09.2019 passed by the learned Additional Sessions Judge -I, Sheikhpura in S.T. No. 69 of 2017 arising out of Sheikhopur Sarai P.S. Case No. 59 of 2017 is set aside and the matter is remitted back to the learned Trial court to pass afresh order after hearing both the parties as well as on the basis of materials available on record, within a period of three months from the date of receipt of copy of this order.

Needless to say that petitioner has to appear before the learned Trial Court on the date fixed.

Accordingly, this application is allowed.

(Vinod Kumar Sinha, J)

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