

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86998 of 2019**

Arising Out of PS. Case No.-77 Year-2016 Thana- PUWAKHALI District- Kishanganj

KHASIRUDDIN RAHMAN @ KHASIUR RAHMAN Son of Sarffuddin
Resident of Village - Basta, P.S.- Powakhali, Distt - Kishanganj

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Diwakar Sinha

For the Opposite Party/s : Mr.Jharkhandi Upadhyay

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 08-01-2020

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 29.11.2018 passed by learned Judicial Magistrate, 1st Class, Kishanganj, in Powakhali P.S. Case No.77 of 2016, by which learned court below took cognizance against the accused-petitioner for the offence punishable under Sections 341, 323, 307, 504, 506/34 of the Indian Penal Code.

Informant has alleged that petitioner along with other FIR named accused jointly made a pucca house on the land of Bihar Government which is adjacent to the village road. On 25.11.2016, the work was stopped by government employee and due to which on 03.12.2016 at 5:30 P.M. they assaulted the



informant and his family members. Khairuddin, Khasiur Rahman and Monajir Alam attacked with arm and Khairuddin, Manazir and Mujahir Alam caught hold of informant's sister Imrani Begam and Khaisur Rahman attacked with axe at her head as a result of which she received 3 inch injury on her head and she was being treated at Siliguri Hospital. Tanwir Alam attacked with sword at the neck of the brother of the informant Samim Akhtar and when he tried to stop, his three fingers were cut. Sarbari, Nilofar, Dilara Nursawa, Jinat, Nargish, Niharun brick batted due to which Samsad Alam, Hazara Khatoon became injured. Naved and Ubed entered the angan of the informant and took away a box containing Rs. 22,000/- and papers of land of the informant.

On the basis of evidence collected during investigation, case diary, the court below found *prima facie* case to be made out against the petitioner and took cognizance for the offence punishable under Sections 341, 323, 307, 504, 506/34 of the Indian Penal Code and issued summons for his appearance to face trial.

At the stage of taking cognizance the court has to form an opinion on the basis of materials available on record whether a *prima facie* case is made out against the accused or not.



The defence of the accused cannot be considered at the time of taking cognizance. This Court in its inherent jurisdiction cannot substitute its view regarding sufficiency or adequacy of material before the court below at the time of taking cognizance and issuance of summons against accused as same is within exclusive domain of trial court.

As such, I am not inclined to interfere with the order passed by the court below and accordingly the present petition is dismissed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

