

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28796 of 2021**

Arising Out of PS. Case No.-15 Year-2018 Thana- HATHUA District- Gopalganj

BIRBAHADUR SINGH @ BEER BAHADUR RAI S/O JAI NARAYAN
SINGH R/O VILLAGE-BARWAN KAPARPURA, P.S- HATHUA,
DISTRICT-GOPALGANJ

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Suresh Pd Singh No.1, Adv.
For the State : Mr. Ajay Kumar Jha, APP

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 19-05-2022 This is an application moved under Sections under Sections 227 & 228 of the Cr.P.C. by one of the accused stating that so far accused petitioner is concerned, he was alleged to having using spear and later on allegation of using Farsa has been made by certain witnesses. However, the injury alleged to have caused by the petitioner is simple in nature and, therefore, the intention to cause death or to attempt to cause an injury, which may result in death, was not present and, therefore, the case could not beyond the provisions of Section 326 of the IPC.

In the circumstances, learned counsel submits that learned Additional District & Sessions Judge, Gopalganj, ought to have remitted the case to the Court of the learned Chief Judicial Magistrate, as the same is triable by the Magistrate and



not by the Court of District & Sessions Judge.

I have considered the submission, this Court notices that an F.I.R. has been registered on 21.01.2018 at Police Station Hathua, making allegations against several accused persons. One of them being the petitioner. There are allegations of other accused persons having been armed with lathi, spear, sword, iron rod and farsa and all of them have been charge-sheeted and were there before the learned Additional District & Sessions Judge.

At the stage of framing of charge, while the learned Additional District & Sessions Judge can discharge some of them or all of them, if the case is not made out under Section 307 of the IPC and other offence. He may also specifically frame a charge against one or the other person individually under the different offences under the IPC.

However, if a charge is framed against any one of them for an offence, which is to be tried exclusively by the Court of Additional District & Sessions Judge, and all the accused are before it, there is no occasion for the learned Additional District & Sessions Judge to separate the trial and remand the case of the petitioner or persons like him to the Magistrate for trial. More so, as there is an allegation against all



of them under Section 147 I.P.C. as well as under Section 34 of the IPC.,

Considering the aforesaid, the submission of the petitioner cannot be accepted. The order passed by the learned Additional District & Sessions Judge does not warrant interference.

Accordingly, this petition is rejected.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 63

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