

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.50836 of 2018**

Arising Out of PS. Case No.-68 Year-2016 Thana- MAIRWAN District- Siwan

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Birendra Tiwary @ Birendra Kumar Tiwary S/o Bikrama Tiwary, R/o Vill.-  
Lebhari, P.S.- Mairwa, District- Siwan.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Surendra Tiwary S/o Late Visheshwar Tiwary, R/o Vill.- Lebhari, P.S.-  
Mairwa, District- Siwan.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Ajay Kumar Pandey, Advocate  
For the Opposite Party/s : Mrs. Asha Kumari, APP

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

3      26-06-2024                      The petitioner is one of the co-accused in connection with Mairwa P.S. Case No. 68/2016, corresponding to GR No. 1885 of 2016, under Sections 147/148/149/341/323/307/379/507 and 506 of the Indian Penal Code. On submission of charge-sheet, learned A.C.J.M-VII Court, Siwan took cognizance of above penal provisions and further held that as offence under Section 307 of the IPC is exclusively triable by the Court of Sessions, Officer In-charge of the concerned P.S. was directed to keep the record in his personal file for commitment and issue summons against the accused persons. It is the grievance of the petitioner that there was no material in the Case Diary to frame charge under



Section 307 of the IPC against the petitioner inasmuch as from the materials of the Case Diary as well as the nature of injury, weapon used in the injury and the statements of the witnesses did not suggest that the *de facto* complainant/ Opposite Party No. 02 sustained any severe injury from which it could be presumed that the petitioner assaulted the Opposite Party No. 02 with the intention to commit his murder.

2. Having heard the learned Advocates appearing on behalf of the petitioner as well as the State as well as on careful perusal of the copy of the Case Diary, I find in paragraph 35 of the Case Diary that the victim/ Opposite Party No. 02 sustained injury on his head and right palm. The Medical Officer advised X-ray of the head and right palm of the Opposite Party No. 02. The X-ray report did not suggest any bony lesion on the head or palm of the petitioner. The Medical Officer opined that the injuries received by the Opposite Party No. 02 is simple in nature.

3. In view of such material, this court concurs that the submission made by the learned Advocate on behalf of the petitioner that there was no material to take cognizance of offence under Section 307 of the IPC.

4. For the reasons stated above, this Court is of the



view that Mairwa P.S. Case no. 68 of 2016 corresponding to G.R. No. 1885 of 2016, exclusively triable by the Court of the learned Magistrate. The relevant part of the order where the learned A.C.J.M.- VII Court at Siwan took cognizance of offence under Section 307 of the IPC against the petitioner and held that the case is triable by the Court of Sessions is, therefore, quashed and set aside.

5. With the above order, the instant Criminal Miscellaneous Case is disposed of.

**(Bibek Chaudhuri, J)**

Suraj Dubey/-

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