

In the Court of Sessions Judge, Sheohar, Bihar**Session Trial No.- 154/2023**

Ref :- Arising out of Tariyani PS Case No.-66/2021, Dated-24.03.2021, U/sections- 147, 148, 149, 341, 323, 324, 307 of I.P.C.

In the matter of :-

1. Arvind Mahto, S/o Nandu Mahto, Aged-about 27 years
2. Ranjan Kumar, S/o Dharamveer Mahto, Aged-about 18 years
3. Sunil Mahto, S/o Nandu Mahto, Aged-about 28 years
4. Dharamveer Mahto S/o Nandu Mahto, Aged-about 35 years
5. Saraswati Devi W/o Nandu Mahto, all are R/o Village-Sonvarsa, PS-Tariyani, Distrcit-Sheohar.

----- **Petitioners****Vrs.**

The State of Bihar

----- **Opposite Party**

Learned counsel for the petitioner : Shri Amlesh Kumar, Advocate.

Learned counsel for Opp.Party : Shri Shailendra Kumar, P.P.

Date of order :- 28.05.2024

ORDER

1. The petition dated 23.11.2023 has been filed on behalf of accused persons, herein after referred to as the petitioners, U/section-228 of CrPC, praying therein that on the perusal of material placed on the record no case U/section-307 of IPC is made out against them, whereas the other sections so alleged in the matter are only triable by the court of learned Judicial Magistrate 1st Class and therefore, it is prayed that the matter may be transmitted the court of learned Chief Judicial Magistrate, Sheohar, for framing of charge and trial in accordance with law.
2. The learned counsel for petitioner submitted that the allegation in the instant case revolves around the brief compass that at 10:30 AM on 22.03.2021 the informant was at the field situating adjacent to the door of Nandu Mahto where he found Saraswati Devi plucking grass therefrom and upon closure scrutiny he found her removing onions from the field. It is stated that upon making objection said Saraswati Devi made assault on him with sickle and when he defended himself than the accused Dharamveer Mahto, Sunil Mahto, Arvind Mahto, Sita Devi, Ranjay Kumar and Anita Devi arrived their armed with sharp edged weapon and made assault on him with the intention to commit his murder. It is further alleged that upon receiving assault he fell down on the ground and when his grandson namely Vikram Kumar Mahto and Abhishek Kumar intervened to save him than they were also assaulted with Lathi, Danda and Farsa. It

has come in the FIR that in course of occurrence the accused Sunil Mahto assaulted the grandson of informant namely Vikram Mahto with Farsa with the intention to commit his murder which caused him injury on his head and thereupon he fell down unconscious. It is even further stated that said Vikram Kumar was assaulted even on his felling down unconscious and he was spared only when he was considered dead by the persons making assault on him.

3. The learned counsel submitted that contrary to the allegation made in the written petition forming basis of FIR the injury of the injured as disclosed in the case diary does not corroborate the same. It is even further submitted that from the nature of allegation itself its apparent that despite of number of persons made assault on the informant and his grandson they received only superficial injuries and as such the allegation so made does not meet the ingredient U/section-307 of IPC. The learned counsel continues to submit that the person against whom there was the allegation of making assault with Farsa has subsequently been got murder and his name has already been expunged from the record and as such the petitioners presently facing trial do not bear any allegation of making assault with the intention to commit murder. It is therefore at last submitted that except the section 307 of IPC the other sections so alleged in the charge-sheet are of triable by the Judicial Magistrate 1st Class. It is therefore, at last prayed that the matter may be transmitted to the court of learned CJM, Sheohar for framing charge and trial in accordance with law.
4. The learned public prosecutor submitted that there is allegation against petitioners of making assault with intention to commit murder of informant and his grandson. It is thereafter submitted that the injury report of injured so mentioned in para-41 and 42 of the case diary discloses injury caused by dangerous weapon capable of taking life. It is therefore submitted that there is the material present on the record disclosing the intention on the part of petitioners of attempting to commit murder of informant and his grandson and therefore there is no substance in the petition so filed on behalf of petitioners and hence the same is fit to be rejected.
5. Heard the parties, perused the record.
6. The allegation against the petitioner is that they were the part of unlawful assemble that made assault on informant and his two grandsons with sharp edged weapon with the intention to commit their murder. It has come in the FIR that the informant and the accused persons were having land dispute in between them since earlier and therefore

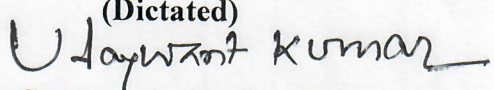
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Present:- Udaywant Kumar

Date of Order :-28.05.2024

the attempt to remove the bone of contention was made by petitioners. The perusal of record reveals that subsequently the police submitted charge-sheet bearing CS No.-275/2021, dated-23.09.2021, U/section-341, 342, 323, 324, 307/34 IPC. The contention of learned counsel for petitioners is that except the section 307 of IPC the other sections are triable by the Judicial Magistrate 1st Class whereas there is no ingredient of section-307 of IPC present on the record and hence in the absence of material no charge under said section can be framed in the matter. On the perusal of cases diary it transpires that witnesses mentioned in para-5, 6, 7 and 8 have supported the prosecution case whereas the re-statement of informant is mentioned there in para-25 of the same. The injury report of Vikram Mahto is mentioned in para-41 of the case diary wherein he is reported to be bearing incised wound on his head measuring 3"x 1/4". The injury report of Abhishek Kumar is mentioned in para-42 of the case diary wherein also the injuries on him has been reported. The case diary does not contain the injury report of informant. It has come in the FIR that the assault was made on informant and his grandsons with the intention to commit their murder.

7. The settled proposition of law is that at the stage of framing of charge the court is not required to look into the defense of accused persons. It has been held in the matter of **State of MP Vrs. SB Johri and others; reported in (2000)2 SCC 57**, that at the stage of 227 or 228 of CrPC court has only to see whether there is prima facie case disclosed by the facts alleged and it cannot appreciate evidence to arrive at a conclusion in the matter.
8. Considering the nature of allegation and the facts and circumstances discussed above this court does not find any substance in the petition so filed on behalf of petitioner and hence the petition so filed on their behalf is hereby rejected.
9. The petitioners are directed to remain present in person on the next date fixed for framing of charge.

(Dictated)

Sessions Judge, Sheohar
28.05.2024