
(2007) 11 PAT CK 0114

In the Patna High Court

Case No : Criminal Miscellaneous No. 12252 of 2006

Gautam Mandal and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 482
Penal Code, 1860 (IPC) — Section 307, 326, 34, 342, 458

Citation : (2008) 3 PLJR 271

Hon'ble Judges : Madahvendra Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Madahvendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as Code) has been filed for quashing the order 23.2.2006 passed by Sri Brahma Nand Prasad, Additional Session Judge, Fast Track Court, Munger in Session Trial No. 871/2005 whereby and whereunder the petition filed u/s 227 of the Code by the petitioners was rejected. The prosecution case in short is that when informant was not present in the house the petitioners came and enquired about the informant from his daughter, aged about 7 years. His daughter replied that informant had gone to market. It is alleged that petitioners and his associates caught hold the informant's daughter and hurled Garasa on her hand as a result of which thumb and index finger of her left hand were cut. There was complete amputation of thumb. On hearing alarm of informant's daughter some neighbors arrived and saved her. On the basis of statement of informant the police registered Muffasil PS Case No. 112/2005 and after investigation submitted charge-sheet. On the basis of which cognizance was taken u/ss. 458, 342, 326 and 307 / 34 of the Penal Code. The case was later on committed to the Court of Session where a petition was filed on behalf of the petitioners u/s 227 of the Code to discharge them from the case on the ground that on the basis of allegations no case against them is made out. The matter was heard and by the impugned order dated 23.2.2006 the same was rejected.

Against the said rejection the petitioners have preferred the present application for quashing before this court.

2. It has been argued that on the basis of materials available on the record no case against the petitioners is made out. In this connection learned counsel pointed out that the victim was treated by Dr. Indradeo Ram but the injury report was prepared by Dr. A.K. Singh. He then pointed out that at the time of alleged occurrence both the petitioners were present at a different place. He also pointed out that nobody had seen the alleged occurrence and not a single drop of blood was found at the place of occurrence.

3. On the other hand learned APP supported the impugned order.

4. Perused the impugned order and the other materials available in the file. The law is well settled that at the stage of Section 227 or 228 of the Code only prima facie case is to be seen. Whether the case is beyond reasonable doubt is not to be seen at this stage. It appears from the impugned order that learned Additional Session Judge after being satisfied that there was sufficient material to frame charge against both the petitioners rejected their prayer for discharge. The purpose behind Sections 227 and 228 is to ensure that the court should be satisfied that the accusation made against the accused is not frivolous and that there is some material against him on the record for proceeding further in the matter.

5. As per the allegation the thumb and index finger of the victim girl was amputated. A wound which deprives a sufferer of a member or a joint or permanently deprives of him of the use of a member or a joint comes within the category of grievous hurt. However, it is difficult to draw a line between those bodily hurts which are serious and those which are slight. A fracture or dislocation of a bone is considered to be grievous.

6. At this stage the defence of the accused is not to be seen. The court below has found materials against the petitioners.

7. In the aforesaid facts and circumstances, at this stage the order of framing of charge cannot be interfered with. This application is, accordingly, dismissed.