

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.4654 of 2016**

Arising Out of PS.Case No. -130 Year- 2013 Thana -LAURIYA District-  
WESTCHAMPARAN(BETTIAH)

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1. MERAJ MIAN S/o Ishaque Mian  
2. Ishaque Mian S/o Late Phula Mian  
3. Izharul Mian S/o Late Buchhi All are resident of village- Bagahi, P.S.-  
Lauriya, District- West Champaran ..... Petitioner/s

Versus

1. The State of Bihar ..... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Aditya Nath Jha -Advocate

For the Opposite Party/s : Mr. B.N.Panday(APP)

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***CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI***

**ORAL ORDER**

2      29-07-2016                      Heard learned counsel for the petitioners as well as  
  
learned APP.

Learned counsel for the petitioner has submitted that the occurrence took place in a spur of moment and further, the nature of allegation attributed to petitioners does not satisfy that the overt act having been at their end was intermingled with an intention to commit murder nor the assault as alleged was inflicted with a knowledge that the aforesaid activity will ultimately result costing life of respective injured whereupon the applicability of Section 307 IPC could not be attracted. That being so, a petition under Section 228 of the Cr.P.C. was filed on behalf of petitioners before the learned lower court which, the learned lower court had rejected without assigning any reason. Consequent thereupon, the order impugned is fit to be set aside.

Learned APP opposed the prayer.

From the order impugned inconsonance with the written report, it is evident that on a trivial issue, all the three petitioners came and as Meraj and Ishaque were protested whereupon Izharul gave rod blow over head of informant. Subsequently thereof, Meraj gave rod blow over the head of Sahmun Khatoon. He also snatched away chain.

For the purpose of framing of charge, a roving enquiry is not at all warranted but the learned lower court was expected to have filtered the allegations which could, at least, expose the ingredients of Section 307 IPC which the order impugned lacks.

That being so, the order is set aside. Petition is allowed.

The matter is remitted to the learned lower court to proceed afresh in accordance with law.

**(Aditya Kumar Trivedi, J)**

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