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**(2003) 05 PAT CK 0074**

**Patna High Court**

**Case No:** Criminal Miscellaneous No. 2966 of 2003

Dwarika Prasad Tiwari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** May 8, 2003

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 148, 34, 436

**Citation:** (2003) 3 PLJR 683

**Hon'ble Judges:** I.P. Singh, J

**Bench:** Single Bench

**Advocate:** G.G. Mishra, for the Appellant; APP, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

I.P. Singh, J.

Heard

2. This application has been filed for quashing only the observation passed by order dated 9.1.2003 by the learned District and Sessions Judge in A.B.P. No. 2069 of 2002 arising out of the Sigon Rs. Case No. 12 of 2001 under Sections 147, 148, 436/34 of the Indian Penal Code.

3. Perused the order impugned. It appears that the learned Magistrate after perusal of the case diary has taken cognizance of offence under Sections 147, 148 and 436/34 of the Indian Penal Code, whereas while disposing an anticipatory bail application, the learned Sessions Judge has observed that no case was found against the Petitioner to attract the offence u/s 436 of the Indian Penal Code since the thatched verandah does not form a dwelling house and thus no case u/s 436 is made out. According to provision of Section 436 of the Indian Penal Code a building which was set to fire was used as a place of worship or as a human living or as a

place for custody of property then only offence u/s 436 of the Indian Penal Code is made out. If the fire is set to part of the building like Dalan attached to dwelling house it would attract offence punishable u/s 436. As such the observations made by the court below was not proper at this stage. Moreso, if a thatched verandah is used as Dalan, it will be considered a part of the dwelling house and setting fire to a portion of the same would certainly attract the offence punishable u/s 436 of the Indian Penal Code. As such the observation made by the learned court below was uncalled for at that stage and is fit to be quashed.

4. Accordingly the observation made by learned Court below dated 9.1.2003 about dwelling house is hereby quashed and the application is allowed. The learned Magistrate is directed to proceed in accordance with law.