

Criminal Revision
Present :-The Hon'ble Justice Ashim Kumar Roy
Judgment On : 21-05-2010.
C.R.R. No. 1412 of 2010
Jahiruddin Khan & Ors.
versus
The State of West Bengal

POINTS :-

Charge sheet – Charge sheet submitted by police was altered by the magistrate – Commitment to the court of sessions – Charges framed by Sessions Court – Learned Magistrate if can Commit the case to Court of sessions without Taking recourse to section 323 of CrPC – Charge under section 308 of I.P.C. if can be sustained – Code Of Criminal Procedure 1973, S 323 and Indian Penal Code 1860, S 308.

FACTS :-

The petitioners have moved this Court for quashing of an order of framing charge under Sections 147/148/149/308 of the Indian Penal Code in connection with a Sessions Case, now pending for trial before the Learned Additional Sessions Judge, Tamluk. It is a case where the charge-sheet was submitted under Sections 147/148/149/323 of the Indian Penal Code, however, the Learned Magistrate before whom such charge-sheet was submitted having found that on the evidentiary materials collected during investigation a sessions triable case has been made out committed the case to the Court of Sessions. Thereafter, the Court of Sessions framed charge under Sections 147/148/149/308 of the Indian Penal Code.

HELD :-

It is well settled that no Court is bound by the conclusion arrived at by the Investigating Agency and it is the duty of the Court before whom charge-sheet is submitted to see on the evidentiary materials collected by the police during investigation what offence has been actually made out and in case the Court find that on the face of those materials a sessions triable offence has been made out there is no legal bar to commit the case to the Court of Sessions.

A plain reading of provisions of Section 323 of the Code of Criminal Procedure, makes it abundantly clear the power conferred there under can be invoked at any stage of any enquiry into an offence or a trial before the Magistrate. According to the said provisions it is not at all necessary that such power can be invoked only after recording of evidence as urged by the learned advocate of the petitioners.

Para 4

In order to make out a case for an offence punishable under Section 308 of the Indian Penal Code it is not at all essential that bodily injury capable of causing death should be inflicted. It is sufficient if the act irrespective of the result was done with the knowledge and under circumstances that if by the act death was caused the man would be guilty for committing an offence of culpable homicide not amounting to murder. Accordingly, considering the nature of weapon used and the portion of the body where the injuries were inflicted it cannot be said that order of framing charge under Section 308 of the Indian Penal Code is not justified.

Para 5

The truth or falsehood of the prosecution case is a matter which ought to be decided after conclusion of the trial and at the stage of framing of charge, it is only required to see whether prima facie case has been made out or not for forming an opinion that there is ground for presuming that accuseds have committed such offence. At this stage it is not permissible for the Court to enter into a detailed enquiry.

Para 5

For Petitioners : Mr. Siladitya Sanyal
Mr. Arindam Jana

THE COURT. 1) Invoking Section 482 of the Code of Criminal Procedure, the petitioners have moved this Court for quashing of an order of framing charge under Sections 147/148/149/308 of the Indian Penal Code in connection with a Sessions Case, now pending for trial before the Learned

Additional Sessions Judge, Tamluk. It is a case where the charge-sheet was submitted under Sections 147/148/149/323 of the Indian Penal Code, however, the Learned Magistrate before whom such charge-sheet was submitted having found that on the evidentiary materials collected during investigation a sessions triable case has been made out committed the case to the Court of Sessions. Thereafter, the Court of Sessions framed charge under Sections 147/148/149/308 of the Indian Penal Code, hence this criminal revision.

2. Appearing on behalf of the petitioners, Mr. Siladitya Sanyal vehemently urged before this Court when the charge-sheet has been submitted in respect of Magistrate triable offences, the Learned Magistrate has no jurisdiction to commit the case to the Court of Sessions without taking recourse to Section 323 of the Code of Criminal Procedure. He further submitted the order of framing charge under Section 308 of the Indian Penal Code is absolutely against the materials on record. Thus, Mr. Sanyal prayed for quashing of the charge under Section 308 of the Indian Penal Code.

3. So far as the first submissions of Mr. Sanyal is concerned, I do not find any wrong in the approach of the Learned Magistrate in committing the case to the Court of Sessions. It is well settled that no Court is bound by the conclusion arrived at by the Investigating Agency and it is the duty of the Court before whom charge-sheet is submitted to see on the evidentiary materials collected by the police during investigation what offence has been actually made out and in case the Court find that on the face of those materials a sessions triable offence has been made out there is no legal bar to commit the case to the Court of Sessions.

4. A plain reading of provisions of Section 323 of the Code of Criminal Procedure, makes it abundantly clear the power conferred thereunder can be invoked at any stage of any enquiry into an offence or a trial before the Magistrate. According to the said provisions it is not at all necessary that such power can be invoked only after recording of evidence as urged by the learned advocate of the petitioners.

5. So far as the next contention of Mr. Sanyal is concerned that the order of framing charge under Section 308 of the Indian Penal Code is against the materials on record, having gone through the evidentiary materials I am not inclined to accept the same. It appears the victim was assaulted on his head with lathi, iron rod and by blunt side of the tangi. It is true due to such

assault injury suffered by him was simple in nature. However, in order to make out a case for an offence punishable under Section 308 of the Indian Penal Code it is not at all essential that bodily injury capable of causing death should be inflicted. It is sufficient if the act irrespective of the result was done with the knowledge and under circumstances that if by the act death was caused the man would be guilty for committing an offence of culpable homicide not amounting to murder. Accordingly, considering the nature of weapon used and the portion of the body where the injuries were inflicted it cannot be said that order of framing charge. Section 308 of the Indian Penal Code is not justified. It was also contended by Mr. Sanyal that it is the case of the prosecution that the victim was conjointly assaulted by five accused persons being armed with various deadly weapons, but the injuries suffered by the victim clearly falsify such claim. The such contention of Mr. Sanyal is a pure question of fact and essentially the defence of the accuseds and cannot be gone into at this stage. The truth or falsehood of the prosecution case is a matter which ought to be decided after conclusion of the trial and at the stage of framing of charge, it is only required to see whether prima facie case has been made out or not for forming an opinion that there is ground for presuming that accuseds have committed such offence. At this stage it is not permissible for the Court to enter into a detailed enquiry. This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(Ashim Kumar Roy, J.)