**HIGH COURT OF TRIPURA**
**AGARTALA**

**Crl. Rev. P 34 of 2018**

Pranjit Namasudra
Son of Lt. Pabitra Namasudra
Of Bamuncherra
P.O. Bamuncherra
P.S. Kamalpur
District Dhalai Tripura
Pin 799286

**.....Accused Petitioner(s).**

Versus

The State of Tripura

**.....Respondent(s).**

| | | |
|---|---|---|
| For Petitioner (s) | : | Mr. S. Chakraborty, Adv<br>Mr. R. Sinha, Adv. |
| For Respondent(s) | : | Mr. S. Ghosh, Addl. P.P. |
| Date of hearing & delivery of judgment and order | : | 21.10.2020 |
| Whether fit for reporting | : | NO |

**HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**Judgment & Order (Oral)**

**21/10/2020**

The instant petition is directed against the order dated 05.03.2018 of the learned Addl. Sessions Judge, Unakoti Judicial District at Kamalpur passed in ST (T-I) 04 of 2018 which reads as under:

"Ld. I/C Addl. PP is present.

Accused Sri Pranjit Namasudra on bail is present alongwith his engaged counsel Mr. Anupam Datta.

Today the case is fixed for DC/FC.

Prima facie having been found charge US 447/324/307 of IPC has been framed against the accused person in separate sheet of paper.

The contents of the charge is read over and explained to the accused to which he pleaded not guilty and claimed to be tried."

**2.** On the same day, the learned trial judge framed the following charges against the accused:

"First, that you on 31.10.2017 at about 08.00 pm at Bamuncherra under Kamalpur PS committed criminal trespass by entering into the house of Nandalal Adhikari with intent to commit an offence and that you thereby committed an offence punishable under section 447 of IPC and within the congnizance of this Court.

Second, that you on the same date, time and place caused hurt o Sri Nandalal Adhikari and his wife Smt. Kalpana Adhikari by means of dao which is an instrument for cutting and lathi which is an instrument by using as an weapon may caused death and thereby committed an offence punishable under section 324 IPC and within the cognizance of this Court.

Last, that you on the same date, time and place did an act, to wit causing hurt of Smt. Kalpana Adhikari and Nandalal Adhikari by using dao and lathi with such intention and under such circumstances that if by that act had caused the death of Smt. Kalpana Adhikari and Nandalal Adhikari you would have been guilty of murder and that you thereby committed an offence punishable under section 307 of IPC and within the cognizance of this Court."

**3.** The accused petitioner has challenged the order dated 05.03.2018 as well as the charges framed against him on the following grounds:

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i. The charges were framed against the accused without providing an opportunity of hearing to learned defence counsel in violation of the mandate of sections 227 & 228 of the Code of Criminal Procedure, 1973.

ii. The charge under section 307 IPC was framed against the accused though there was no prima facie material against him for framing charge of offence under section 307 IPC.

**4.** Heard Mr. S. Chakraborty, learned advocate appearing along with Mr. R Sinha, learned advocate for the accused petitioner as well as Mr. S. Ghosh, learned Addl. P.P. appearing for the State respondent.

**5.** The facts giving rise to the case, briefly stated, are as follows:

One Sri Nikunja Adhikarki, Son of late Nimai Chand Adhikari of Bamuncherra, Kamalpur lodged a written complaint with the Officer-in-Charge of Kamalpur police station alleging, inter alia, that some supporters of the Communist Party of India (Marxist) having trespassed into the house of Sri Nandalal Adhikari, a supporter of Bharatiya Janata Party had assaulted said Sri Nandalal Adhikari and his wife Smt. Kalpana Adhikari with dao (a sharp edged weapon) which resulted in severe bleeding injuries of said Sri Nandalal Adhikari and his wife Smt. Kalpana Adhikari. Both of the victims were taken to Kamalpur Sub Divisional hospital from where they were referred to GBP hospital at Agartala.

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**6.** Based on the written complaint of said Sri Nikunja Adhikari, Kamalpur PS case No. 2017 KMP 115 under sections 447/326/307 IPC was registered and investigation was taken up.

**7.** Having entrusted with the investigation, Sri Satya Baman Debbarma, Sub Inspector of Police carried out the whole investigation and submitted the charge sheet No. 88 of 2017 dated 30.12.2017 against accused Pranjit Namasudra, Son of Late Pabitra Namasudra of Bamuncherra for having committed offence punishable under sections 447, 324 and 307 of the Indian Penal Code (in short IPC). Having taken cognizance of the offence, the Sub Divisional Judicial Magistrate, Kamalpur committed the case to the court of learned Addl. Sessions Judge at Kamalpur for trial. After the accused appeared before the court, the learned trial court framed the said charges against him under sections 447, 324 and 307 IPC and passed the order dated 05.03.2018 which are under challenge.

**8.** It is contended by Mr. S. Chakraborty, learned counsel appearing for the petitioner that order dated 05.03.2018 of the learned trial court nowhere reflects that learned counsel of the accused was heard before the charges were framed against the accused. According to Mr. Chakraborty, learned counsel, a conjoint reading of section 227 and section 228, Cr.P.C makes it apparent that hearing of the submissions of the accused is mandatory before the charges are framed against the accused. It has been contended by learned counsel that the order dated 05.03.2018 of the learned trial judge nowhere indicates

that learned counsel of the accused was heard or submissions made on behalf of the accused were considered by the learned trial court before framing of charge.

**9.** Further submissions on behalf of the revision petitioner is that the injury reports of the said victims namely Sri Nandalal Adhikari and Smt. Kalpana Adhikari would show that both of them had suffered some simple injuries only and therefore section 307 IPC does not apply in this case. According to learned counsel, the learned trial court did not apply judicial mind before framing of charge under section 307 IPC and therefore the charge framed under section 307 IPC by the learned trial court needs to be set aside.

**10.** In support of his contention, Mr. S. Chakraborty, learned counsel appearing for the accused petitioner has relied on the following decisions of the Apex Court:-

i. **Sagayam Vs. State of Karnataka** reported in **(2000) 4 SCC 454**.

ii. **Ghulam Mustafa Vs State of Uttarancha**l reported in **(2016) 15 SCC 752.**

**11.** Mr. S. Ghosh, learned Addl. P.P appearing for the State respondent on the other hand submits that the prima facie materials available on the record of this case were enough for the trial court to frame a charge under section 307 IPC against the accused and in so far as the question of framing charge is concerned, the trial court did not commit any error. Mr. S. Ghosh, learned Addl. P.P, however, submits

that since the accused petitioner has projected a grievance that he was not heard before the framing of charge, an opportunity of hearing may be given to the accused petitioner and a direction may be made in this regard to the learned trial court to frame the charges afresh after hearing the accused and considering the submissions made on behalf of the accused.

**12.** The procedure of trial before the court of Sessions is provided under Chapter XVIII of the Code of Criminal Procedure, 1973 from section 225 to section 237.

**13.** To deal with the present controversy, at this stage it would be apposite to take note of sections 227 & 228, Cr.P.C which reads as under:-

**227. Discharge.**—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

**228. Framing of charge.**—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, 1[or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and

thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

**14.** A conjoint reading of these 2 (two) sections makes it clear that apart from consideration of the record and the documents submitted therewith, accused has to be given an opportunity of hearing before the charges are framed against him. It is true that the impugned order dated 05.03.2018 does not reflect as to whether the learned trial court heard learned counsel of the accused and considered the submissions made by him. Since the grievance has been ventilated before this court that learned counsel of the accused was not heard by the learned trial court before framing the charges against the accused it would be appropriate for the learned trial court to frame the charges afresh against the accused after hearing learned appointed advocate of the accused.

**15.** Since the accused is being given an opportunity of hearing on the question of framing of charge, it would not be appropriate to discuss at this stage as to whether section 307 IPC applies in this case or not. Learned counsel of the accused may have his submissions in this regard before the learned trial court at the time of hearing on the question of framing of charge.

**16.** The learned trial court is directed to frame the charges afresh against the accused upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions made on behalf of the accused without being influenced by this order in any manner. The learned trial court shall conclude the trial of the case as expeditiously as possible.

The revision petition is accordingly disposed of.

Send back the LC record.

**JUDGE**

HIGH COURT OF TRIPURA
सत्यमेव जयते

*Rudradeep*