

11.03.2021
Ct. No. 35
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**C.R.R. No. 44 of 2015
with
CRAN 7 of 2018 (Old No. CRAN 3793 of 2018)**

In the matter of : An application under Section 482 of the
Code of Criminal Procedure.

And

In the matter of : Smt. Chitrani Biswas petitioner

Mr. Debabrata Roy
..... for the petitioner

Mrs. Manasi Roy
..... for the opposite party no. 2

Mr. Partha Pratim Das
..... for the opposite party no. 3

Ms. Faria Hossain
Mrs. Sonali Das
..... for the State

The parties are represented.

The petitioner, in the present application under Section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 29.03.2007 passed in G.R. Case No. 416 of 2004 pending before the learned Judicial Magistrate, 3rd Court, Serampur, Hooghly, on the ground that the said order was granted without giving an opportunity of hearing to the petitioner.

Learned counsel appearing for the petitioner submits that after unnatural death of her brother she lodged complaint before Serampur Police Station on 12.05.2004 on the basis of which criminal case was started under Section 306 of the Indian Penal

Code. After completion of investigation, charge-sheet was submitted against the opposite parties no. 2 and 3 under Sections 341/323/34 of the Indian Penal Code. Learned counsel further submits that the injury report of the deceased reveals several injuries sustained by him and the postmortem report says that death was due to the effect of such injuries which are ante mortem in nature. The petitioner's grievance is that on submission of charge-sheet by the investigating officer, learned trial court took cognizance of the same mechanically without affording an opportunity to the petitioner to place her objection against the same. The petitioner believes that death of her brother was either homicidal or suicidal and under no such circumstances could the charge-sheet have been filed under Section 323 of the Indian Penal Code.

The State is represented and refers to the relevant portions of the case diary.

It transpires from the materials on record that the petitioner lodged complaint before the Serampur Police Station on 12.05.2004 wherein she alleged that her brother Arijit Ghose, husband of Suparna Ghose, was tortured and assaulted by his wife who also abetted commission of suicide by him. Unable to bear such torture meted out by his wife and her brother, he was in a state of depression and on 11.05.2004 at about 8.30p.m. he fell from the roof of his house following an altercation with his wife and her brother and succumbed to his injuries on 12.05.2004. On the basis of such complaint, Police Station Case No. 115 of 2004 dated 12.05.2004 under Section 306 of the

Indian Penal Code was started. A statement made by Avishek Biswas (opposite party no. 3), brother of opposite party no. 2, was recorded and handed over to the police. The statement of opposite party no. 3, prima facie, suggests that the victim was assaulted by opposite party no. 2 with a range on his head following a quarrel between them, for which he sustained severe bleeding injuries. It is a fact that truth and veracity of such statement shall be determined by the learned trial court in course of trial. But at the same time, the postmortem report as well as the injury report of the victim are in consonance with the said statement. Surprisingly, charge-sheet was submitted under Sections 341/323/34 of the Indian Penal Code.

There is apparently glaring contradiction between the contents of the postmortem report and the injury report on one hand and the provisions of law under which charge-sheet has been submitted. Moreover, the learned trial court took cognizance of the charge-sheet by the order impugned which reveals that the said cognizance was taken in the absence of the petitioner/defacto complainant and without serving notice upon her with regard to the same. It is evident that the petitioner/defacto complainant was not given an opportunity to make her submission in respect of the charge-sheet or file any objection thereto.

In the circumstances, I am of the view that the impugned order dated 29.03.2007 is required to be quashed/set aside and the learned trial court should consider cognizance of the charge-sheet only after hearing the petitioner/defacto complainant.

It is made clear that I have not gone into the merit of the case and the learned trial court shall deal with the charge-sheet upon consideration of the submission made by the petitioner/defacto complainant and if necessary the investigating officer in accordance with law without being influenced by any observation made in this order.

It appears that the case was transferred from the court of the learned Additional Chief Judicial Magistrate, Serampur to the court of the learned Judicial Magistrate, 3rd Court, Serampur, Hooghly, for disposal.

The lower court record be sent back to the court of the learned Additional Chief Judicial Magistrate, Serampur, for dealing with the same in terms of this order.

Accordingly, the revisional application being CRR 44 of 2015 is allowed.

The connected application being CRAN 7 of 2018 (Old No. CRAN 3793 of 2018) is accordingly disposed of.

There will be no order as to costs.

Copy of this order along with lower court records be sent down to the learned trial court forthwith for necessary compliance.

As the matter is pending for long, the learned trial court should make all endeavours to dispose of the case as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Suvra Ghosh, J.)