

20.1.2021
ks.
Ct.42,Sl. 33

CRR 1322 of 2019
Debi Prasad Ghosh
vs
State of West Bengal & Ors.

Mr. Amajit De
...for the petitioner.

Mr. M. Sur
Mr. Dipankar Paramanick
... for the State.

Ms. Trina Mitra
...for the O.P.Nos. 2-7.

Affidavit-of-service filed in court be kept with the record.

The impugned order dated 3rd March, 2019 passed by the learned Additional & District Sessions Judge, Special Court, Durgapur, Paschim Burdwan in Sessions Case No. 6 of 2019 allowing discharge to opposite party Nos. 2-7 from the charge under Section 307 IPC and thereby directing the charge-sheeted accused persons to face trial before the learned Magistrate Court for the remaining offence, being triable by the learned Magistrate, is the subject of challenge in the revisional application.

Learned Advocate, Mr. Amajit De appearing for the petitioner submits that after being dashed by a vehicle, the petitioner fell down from his own two wheeler, when the miscreants attacked him with iron rod causing him to suffer several injuries including his head injuries. It is further contended by Mr. De that the petitioner had to be admitted to local hospital from 25th April to 1st May, 2016 and thereafter for adequate treatment, the petitioner had to move Apollo Gleneagles Hospitals, when the petitioner was subjected to CT scan, which revealed an

impression stating haemorrhage contusions in both temporoparietal region with surrounding oedema and fracture in right parietal and right temporal bone involving the right mastoid.

The principal thrust of the petitioner is that the investigation was not properly conducted collecting all relevant medical documents of the victim, which the petitioner produces before the Court like the copy of CT scan of brain of de facto complainant, victim.

Learned Advocate representing the State Mr. Madhusudan Sur with production of copy of CD submits that for want of materials, the learned court below recorded discharge u/s. 227 Cr.P.C. for want of materials u/s. 307 IPC in favour of private opposite parties observing therein that the offence complained of, could be easily tried before the learned Magistrate.

Adverting to a discharge summary of the concerned hospital wherein the victim/de facto complainant found his admission, learned Advocate representing the State submits that the victim sustained injury in connection with a road traffic accident and further the petitioner/de facto complainant represented a different story in his 164 Cr.P.C., contrary to the version of FIR, depicted therein. The attention of the Court drawn to the 164 statement, in support of the discharge already accorded in this case.

Ms. Trina Mitra, learned Advocate representing the private opposite party Nos. 2-7 supporting the learned Advocate representing the State submits that the court not only

considered the medical documents already collected, but also considered the statement of two other witnesses including 164 statement and upon consideration of all such materials, the private opposite party nos. 2-7 were favoured with discharge from offence u/s. 307 IPC, which should remain undisturbed.

Having considered the rival submission of the parties and the materials placed in the CD, it appears that CT scan report of the injured victim and other incidental medical papers remained uncollected during investigation. Upon perusal of the impugned order, it appears that while recording an order of discharge by the learned Court below, there was no objection on the part of the learned Public Prosecutor-in-Charge conducting the case. Though the court below took into account the no objection of the learned Public Prosecutor conducting the trial, but independently had taken care of all the medical documents and the two independent witnesses so as to gather materials under Section 307 IPC, if there be any. The learned Court below, however, did not find any material supportive of making application of 307 IPC against the private opposite parties and, accordingly, discharged the private opposite parties under Section 227 Cr.P.C.

It is not clear, if the petitioner/victim had already initiated any claim case before the competent authority for the alleged injury he sustained.

Since the CT scan of the brain of injured victim/de facto complainant went unevaluated after collecting the same from the de facto complainant, the Court finds sufficient reasons to interfere with the impugned order.

The impugned order favouring discharge to opposite party Nos. 2-7 is, thus, set aside with a direction upon the learned Additional and District Sessions Judge, Special Court, Durgapur, Paschim Burdwan to re-hear the petition under Section 227 Cr.P.C. praying for discharge within a fortnight from the date of communication of this order, upon restoring the case to the original Sessions file and number(SC 6/19).

The petitioner is directed to produce copy of the CT scan report and other incidental medical papers remaining uncollected by the Investigating Officer before the learned Trial Court(Sessions Court).

The petitioner is also directed to file an application including copy of the CT scan report and other incidental medical papers remaining uncollected by the Investigating Officer before the learned Sessions Judge(Trial Court) within a week from hence with a prayer for consideration of the charge afresh. The concerned learned Magistrate, before whom the case has already transferred by the learned Additional and District Sessions Judge, Special Court, Durgapur, Paschim Burdwan upon transferring the case, is directed to remit back the case record to the learned Additional District and Sessions Judge, Durgapur, Paschim Burdwan upon visualising the contents of the order so as to ensure fresh hearing of the discharge application within a scheduled period of time.

Learned Additional District Judge, Durgapur(Trial Court) is further directed to hear both the parties particularly the de facto

complainant/ petitioner afresh and decide the issue in accordance with the provisions of the law.

Whether the CT scan impression report of brain of de facto complainant/injured/petitioner is consequent upon being dashed by vehicle or product of injury after being allegedly wounded with iron rod, the same is left to be decided by the learned Additional District Judge, Durgapur(Trial Court) at the appropriate stage of trial under the provisions of law.

With the above observation, this revisional application stands disposed of.

CD be returned.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Subhasis Dasgupta, J.)