

CRR 1137 of 2021

**Kalam Sk.
Vs.
The State of W. B. & Anr.**

Mr Dipanjan Chatterjee

Mr. Prabir Majumder

Ms. Puja Kar

.....For the Petitioner

Mr. Amanul Islam

Mr. Sourav Mukherjee

...For the Private Opposite Party Nos. 2 to 6

Md. Anwar Hossain

Ms. Sujata Das

.....For the State

Report submitted by Mr. Hossain, learned advocate for the State be kept with the record.

Service has been effected upon the learned advocate for the opposite party nos. 2 to 6.

The case of the petitioner is that in spite of foundation of the case, Section 307 of the Indian Penal Code has not been incorporated and the police has filed charge sheet under Section 326 of the Indian Penal Code. Whether Section 307 or Section 326 of the Indian Penal Code would be applicable for prosecuting the accused persons is the subject matter, which is to be decided at the stage of consideration of charge.

In view of the fact that the materials are same particularly the medical reports it is only the interpretation of the court, which would weigh regarding the applicability of the Section. In view of the grievance expressed by the petitioner at whose instance the case was initiated, I direct that the petitioner would be at liberty to file his written notes of arguments supporting his case for a sessions triable offence through learned Public Prosecutor appearing before the learned trial court. The learned Magistrate would afford chance to the accused to contest the written notes of arguments of the

complainant filed through the Public Prosecutor and thereafter take a decision whether the case should continue under Section 326 of the I. P. C. or should be committed to the court of sessions if any charge is made out under Section 307 of the Indian Penal Code. The discretion for Section 326 or Section 307 of the Indian Penal Code would be exclusive domain of the learned Magistrate at the stage of consideration of charge.

Needless to state that this court has not entered into the merits regarding the applicability of the Sections and the learned Magistrate would be at liberty to independently assess the same at the stage of consideration of charge.

CRR 1137 of 2021 is disposed of.

Report so submitted be kept with the record.

All parties are directed to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)