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C.R.R. No.2216 of 2019

In Re: An application under Section 482 of the Code of Criminal
Procedure, 1973;

Antara Chaudhuri
Versus
State of West Bengal & Anr.

Mr. Amarta Ghose,
Ms. Rituparna De Ghose,
Mr. Siddhartha Paul.
...for the petitioner.

Mr. Arijit Ganguly,
Mr. Santanu Chatterjee,
Ms. Debjani Sahu.
...for the State.

The subject matter of challenge in the present revisional application relates to the order dated 15.07.2019 passed by the learned Additional District and Sessions Judge, Fast Track Court, Birbhum, Rampurhat in SC 113 of 2018 arising out of G.R. Case No.446 of 2011 corresponding to Sainthia P.S. Case No.14 of 2011 dated 25.6.2011 under Sections 341/323/325/307/34 of the Indian Penal Code. By the said order, the learned Sessions Court in *seisin* of the proceedings was pleased to dismiss the prayer advanced by the petitioner for discharge and framed charge under Sections 341/323/325/307/34 of the Indian Penal Code.

In view of the prayer advanced before this Court, the case diary was called for and Mr. Arijit Ganguly, learned advocate appearing for the State has drawn the attention of this Court to the relevant medical documents which are available in the case diary.

I have considered the medical documents of the

Emergency of NRS Medical College as well as that of one Dr. Moinul Hossain, both dated 22.06.2011.

I have also considered the background of the case relating to the informant/victim boarding a ladies compartment wherein she found that number of ladies were laying down on the seats available in the compartment and were not allowing the complainant/victim to sit in the available chairs. It was out of protest that all of them at the spur of the moment attacked the victim which included assault as well as injuries.

As the case is to proceed on trial, I am not analysing the medical reports as well as the statement of the witnesses at this stage, but having regard to the fact that there was no pre-design of the accused persons to commit the alleged offences, as also taking into account the difference between Section 307 and Section 326 of the Indian Penal Code where the bodily injury should be of such a nature that there is possibility of cause of death. The other issue in the facts of the case which primarily satisfies the contentions are relating to the observations made by the medical officers, the only thing which weighed against the petitioner or the accused persons is the number of persons who had attacked the victim.

Having regard to the nature of the allegations and the materials appearing in evidence so collected by the Investigating Agency, I am of the opinion that an offence has been made out, but primarily the materials do not satisfy the test of Section 307 of the Indian Penal Code for which the accused persons are to be charged. However, as charges are supposed to be tentative and are to be

dealt with finally at the conclusion of the evidence regarding its applicability in respect of the materials collected, I am of the view that, instead of Section 307 of the Indian Penal Code, the offence is to be considered as under Section 326 of the Indian Penal Code for the purpose of charge.

Needless to state that such charge may or may not sustain at the end of the trial after the evidence is over.

In view of the aforesaid findings, I am of the opinion that the case records be transmitted to the jurisdictional court having both territorial as well as jurisdiction over the substantive allegations for proceeding with the trial of the case. Thus, the order dated 15th July, 2019 is set aside. The charges for the present would be considered as Sections 341/323/325/326/34 of the Indian Penal Code. The same is presumably a magisterial triable offence and, as such, the learned Magistrate will read out the charges and proceed with the trial of the case.

Accordingly, CRR 2216 of 2019 is partly allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

The officer deputed by the Inspector-in-Charge of Sainthia G.R.P.S. is present in Court. His further appearance before this Court stands dispensed with.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)

