

D/L 125
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C.R.R. No.2563 of 2019

In Re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 filed in connection with SC Case No.65 of 2019 arising out of G.R. No.1615 of 2018 corresponding to Dadpur Police Station Case No.146 of 2018 dated 02.10.2018 under Sections 447/435/379/506/307 of the Indian Penal Code, 1860;

Arobinda Patra
Versus
The State of West Bengal & Anr.

Mr. Tapas Kr. Ghosh,
Mr. Tanmoy Chowdhury.
...for the petitioner.

Mr. Madhusudan Sur,
Mr. Arijit Ganguly,
Mr. Manoranjan Mahata
...for the State.

Mr. Ghosh, learned advocate appearing for the petitioner has challenged the order dated 26.08.2019 passed by the learned Additional District and Sessions Judge, 3rd Court, Hooghly in connection with SC Case No.65 of 2019 (arising out of Dadpur Police Station Case No.146 of 2018 dated 02.10.2018).

The petitioner by filing an application contended before the learned sessions court regarding the applicability of Section 307 of the Indian Penal Code being incorporated in the charge-sheet which was filed under Sections 447/435/379/506/307 of the Indian Penal Code.

Mr. Ghosh, learned advocate appearing for the petitioner argues on two-fold points. Firstly, no offence under Section 307 of

the Indian Penal Code is made out and secondly, there are no materials available on record to implicate the present petitioner under Section 379 of the Indian Penal Code.

To substantiate his argument, Mr. Ghosh submits that even if the prosecution case is accepted in its entirety it was the hay stack which was set on fire and there are no materials on record to show that there was any attempt made on the life of the complainant or his relatives. Learned advocate also submits that the attending materials collected by the investigating agency also do not show that any burnt materials from the house was collected so as to substantiate the charge of attempt to murder. It is his contention that the allegations have been blown out of proportion in order to suit the charges for being sessions triable offence.

So far as the other contention is concerned, learned advocate for the petitioner draws the attention of this Court to the letter of complaint, the materials collected by the investigating agency and which has been relied upon by them under Section 207 of the Code of Criminal Procedure and submits that there are no connecting materials to relate an offence under Section 379 of the Indian Penal Code and the foundation has been made on the basis of a cycle which has been recovered after 18 days.

Mr. Sur, learned advocate for the State opposes both the contentions advanced by Mr. Ghosh and submits that there are overwhelming materials supporting the case of the prosecution. Learned advocate has drawn the attention of the Court to the letter of complaint as well as the statements under Section 161 of the

Code of Criminal Procedure so recorded by the investigating officer and relied upon. According to the learned advocate for the State that until and unless the evidence on dock is adduced before the competent trial court the truth or falsity of the allegations cannot be adjudged at this stage when the learned trial court is at the stage of consideration of charges.

I have perused the letter of complaint, the statements of the witnesses and I find that hay stack was kept adjacent to the house of the complainant. There was every probability that the fire which was set would connect with the house and set it on fire. The apprehension expressed at this stage regarding the intention of the accused is to be tested by way of cross-examination as to whether the same was simple a mischief, a counter-blast to the earlier incident on 30.09.2018.

The adjudication over the issue of applicability of Section 307 of the Indian Penal Code can be made at the end of the trial not at this stage when the case is for the purposes of consideration of charges. However, so far as the other contention is concerned regarding the applicability of Section 379 of the Indian Penal Code, I am prima facie of the opinion that there are no connecting materials for asking the petitioner to face the trial under the charges of Section 379 of the Indian Penal Code. The same prima facie is for the purpose of establishing the motive or initiation of the case and its starting point.

Accordingly, the order dated 26.08.2019 which do not interfere with the sections incorporated in the charge-sheet is interfered with

to the limited extent that so far as the charges which have been provided therein the applicability of Section 379 of the Indian Penal Code is contrary to the materials collected by the investigating agency and, as such, the charges under Section 379 of the Indian Penal Code are hereby quashed. The learned trial court is directed to frame charges under Sections 447/435/506/307 of the Indian Penal Code and proceed with the case in accordance with the provisions of law.

Thus, CRR 2563 of 2019 is partly allowed.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

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

(Tirthankar Ghosh, J.)