

20.12. 2022
item No.18
n.b.
ct. no. 551

CRR 2612 of 2017
with
IA No. CRAN 3 of 2018(Old No. CRAN 2717 of 2018)

Syed Afsar Reza
Vs.
The State of West Bengal & Ors.

Mr. Subhasish Pachhal,
Mr. Intiaj Belal,
Mr. S. Biswas,

.....for the petitioner.

Mr. Binay Panda,
Ms. Puspita Saha,
.... For the State

Mr. Debashis Roy,
Mr. Sanat Kr. Das,
Mr. Sujan Chatterjee

.... For the O.P. Nos. 2-6.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the complainant of a case being G.R. Case No. 2761 of 2016 arising out of Murshidabad P.S. Case No. 475 of 2016 dated 28.9.2016 under Section 304A of the IPC now pending before the Judicial Magistrate (L), Murshidabad.

The brief fact of the case is that the son of the informant aged about ten years who was the student of class V of New Immaculate School died on 27.9.2016 at about 3. P.M. while a partition wall of the school had fallen upon the son of the petitioner. The boy was succumbed to his injuries at hospital. The instant case was initiated on the basis of the written complaint of the petitioner. Police took up the investigation. After competition of investigation

police has submitted charge sheet against the accused persons under Section 304A of the IPC. Two applications were filed, one on behalf of the accused persons and another on behalf of the petitioner. The accused person filed an application for discharge and complainant filed the application for further investigation. Both the applications were turned down by the learned Magistrate below.

The instant criminal revisional application has been preferred by the complainant on the ground that the investigation of the police is not proper and if the investigation done correctly, the charge has to be framed against the accused persons under Section 304 Part - II of the IPC instead of 304A of the IPC.

Learned advocate appearing on behalf of the petitioner submitted before this Court that investigation conducted by the police is not proper and it is conducted in perfunctory manner. He further submitted that it would be reverted from the statement of available witnesses, that the school authority had the knowledge regarding the status of the partition wall, but, they had not made any proper repair and the school authority cannot deny their liability over the fact. Certain materials are there with the Case Diary regarding their knowledge. Thus, the charge-sheet submitted by the police under Section 304A of the IPC is not proper in support of his contention. He has cited a decision reported in *(2007) SC 249* at para 7.

I have gone through the citation; the Hon'ble Supreme Court has held that the view of the High Court is justified in converting

the conviction of the respondent by altering the same to one under Section 304 Part – II IPC instead of Section 302 of the IPC.

In careful reading of paragraph 7 of the said judgment appears that the Hon'ble Supreme Court is of the view that the knowledge of the offence by the accused person has been properly proved. Thus, they converted the conviction to 304 Part – II from 302 of the IPC.

Learned advocate appearing on behalf of the opposite party submitted before this Court that police has conducted investigation properly and after completion of investigation police has submitted charge-sheet. He further pointed out that the Post-Mortem report disclosed the cause of the death to be “accidental in nature”. The other evidence on record which was collected by the police during the course of investigation does not indicate any ingredients for which the charge can be framed under Section 304 Part – II of the IPC.

Thus, the instant criminal revisional application has no merit to entertain.

Learned advocate Mr. Panda appearing on behalf of the State submitted the Memo of Evidence as well as Case Diary.

Considered the Case Diary and materials from the records it appears that during the course of investigation police has collected statement of available witnesses, statement of students, statement of other material evidences, the PM report and the bed head ticket of the deceased. Learned advocate appearing on behalf of the State further submitted before this Court that learned Magistrate

has cause no error in passing the impugned order and the instant revisional application has no merit to entertain.

Heard the learned advocate for both the parties. Perused the materials on record and also perused the Case Diary. It appears that the boy succumbed to the injuries after falling of partition wall upon him. During post mortem, the autopsy surgeon is of the view that the cause of death is “accidental anti mortem in nature”. The I.O. also submitted the report to that effect and charge-sheet has been submitted under Section 304A of the IPC. Let me consider whether there are any ingredients to attract the offence punishable under Section 304 Part – II of the IPC. Some witnesses stated before the I.O. that the school authority had the knowledge regarding the status of the partition wall. It further appears that the school authority had the knowledge that some children were there and any time an accident may occur. Section 304 part II IPC has its basic ingredients regarding the knowledge and commission of the offence and obviously the ingredients of mens rea I find that in this particular case there may have some knowledge of status of the partition wall but the mens rea to commit the offence under Section 304 part II is very much absent in this case.

Considering the same, I am of the view that the police authority conducted the investigation in proper manner and submission of charge sheet under Section 304A is not at all improper. During the course of trial if it appears to the learned Magistrate that there are some ingredients to invoke an offence in higher degree; there are every scope by the Magistrate to convert the same and forward the record to the upper forum.

Considering the same, I find no merit to entertain the instant revisional application. Accordingly, the same is dismissed and disposed of.

Any interim order of stay passed by this Court during the course of proceeding of this instant revisional criminal application is hereby vacated.

All pending connected applications, if any is also disposed of.

It further appears that the case is pending before the Learned Magistrate for a long period. Accordingly, the learned Magistrate is directed to dispose of the same as early as possible, preferably within six months from the date of receipt of this order.

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

(Subhendu Samanta, J.)