

08.09.2023
Serial no. 45
[G.S.D]

CRR 3352 of 2023

In the matter of : Prosen Khamaru @ Prasen Khamaru & Anr.

... .. Petitioners

Mr. Milan Mukherjee
Mr. D. Dutta
Mr. P. Mukherjee
... For the Petitioner

Mr. S. G. Mukherjee
Mr. Imran Ali
Ms. Debjani Sahu
... For the State

The petitioner is directed to serve a copy of this revisional application upon Mr. Imran Ali, Learned Advocate, who ordinarily appears on behalf of the State. His appearance may be regularised by the concerned authority.

Mr. Mukherjee, Learned Senior Advocate appearing on behalf of the petitioner, submits that the statement of the witnesses read along with the medical documents, which have been relied upon, fails to make out a case of culpable homicide. So far as Section 308 of the IPC is concerned, Learned Senior Advocate questions regarding the findings of the investigating agency and the prosecution to pursue such remedy before the Learned Sessions court.

It has also been pointed out that Section 325 of the IPC has been incorporated because of the medical reports which are appearing in respect of Mamoni Naiya and Basudeb Naiya.

Further it has been contended that after both the medical reports are taken up together and the offence under Section 325 of the IPC is accepted to be true, then, in that case, an offence under Section 308 of the IPC is hardly made out.

Additionally, it has been submitted that since the case has already been committed to the Court of Sessions, it would be difficult to revert back the clock to the Learned Magistrate.

I have considered the submissions advanced by the Learned Senior Advocate and I am of the view that, at this stage, when the case is ready for consideration of charges, the petitioner would be at liberty to canvass all the points before the Learned Sessions Court, *in seisin*, of the matter.

The Learned Sessions Court is directed to first consider, at least, the facts and circumstances of the case and, thereafter, take into account the totality of the circumstances for consideration regarding the applicability of the rest of the sections.

In the background of the materials collected by the investigating agency, if an application under Section 227 of

the Cr.P.C. is preferred, in that case, the learned Court would first adhere to the observations made above and thereafter proceed in accordance with law without being influenced by any of the observations made by this Court.

With the above observations, CRR 3352 of 2023 is disposed of.

Pending application, if any, is also disposed of.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court at Calcutta.

Urgent Photostat certified copy of this order, if applied for be supplied to the parties, subject to compliance with all requisite formalities.

(Tirthankar Ghosh, J.)