

CRR 691 of 2018

Abdul Kadir & Ors.

Vs.

The State of W. B. & Ors.

Mr. Partha Sarathi Das

Mr. Kausik Biswas

Ms. Shanta Sarkar

Mr. Debojyoti De

Mr. Souaja De

.....For the Petitioners

Mr. Debasish Roy

Ms. Faria Hossain

.....For the State

Mr. Kazi M. Rahman

.....For the De facto complainant

Affidavit of service filed by the petitioners is taken on record.

The instant revisional application has been filed by the petitioners under Sections 401 and 482 of the Code of Criminal Procedure, 1973 seeking quashing of proceeding pending before the learned Additional Chief Judicial Magistrate, Chanchal Malda in connection with Ratua Police Station Case No. 135/2015 dated 19.05.2015 under Sections 447/325/326/34 of the Indian Penal Code corresponding to G. R. Case No. 678 of 2015. Subsequently charge sheet being no.221 of 2015 dated 31.07.2015 has been filed under Sections 447/323/324/34 of the Indian Penal Code. The Investigating Officer further submitted a supplementary charge sheet being no. 98 of 2016 dated 15.06.2016 under Sections 447/324/325/307/34 of the Indian Penal Code against the petitioners.

It is the case of the petitioners that there was a case and

counter case between the parties. Both sides suffered injuries. However, injuries suffered by the de facto complainant is not so grivious to constitute offence under Section 307 of the Indian Penal Code. Accordingly, the present petitioner came before this court for quashing of the said charge sheet filed by the Investigating Officer because the supplementary charge sheet has been filed mechanically without considering the injury report and actual facts and circumstances of the case.

On the other hand, the de facto complainant, namely, Safiqul Alam appeared through learned advocate and submits that he is not made a party though he was a de facto complainant in the instant case.

Liberty is given to the petitioners to add the de facto complainant as opposite party no.3 in course of the day.

During hearing, both the parties submit that the trial court has already framed charge and proceeded with the trial. Eye witnesses have already been examined. The issue regarding non-application of Section 307, I. P. C. should be raised by the petitioners during the trial or at the time of argument. Accordingly, this application is not maintainable and as such it is liable to be dismissed.

On the other hand, learned advocate appearing on behalf of the State, Ms. Faria Hossain also submits though the charge sheet was filed under Section 307 of the Indian Penal Code, the contention of the petitioners is that no such injury was suffered by the de facto complainant to constitute offence under Section 307. It may be

decided after taking evidence from both the parties and at the time of final conclusion of the trial.

Accordingly, the instant revisional application is liable to be dismissed.

Heard the submissions of both the sides and perused the entire materials available in the application, this court finds the issue raised by the petitioners herein can be raised at the time of trial. Since the trial has already commenced and almost five witnesses have been examined as submitted by the parties.

Under such above facts and circumstances, I am disposing of the case with an observation that the trial court can consider this issue at the time of disposing of the instant proceeding.

I hope and trust that the instant case may be disposed of as early as possible without granting unnecessary adjournment to the parties.

With these observations CRR 691 of 2018 is thus disposed of.

Interim order, if any, stands vacated.

Let a copy of this order be communicated to the learned court below for information.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on urgent basis after compliance of all necessary formalities.

(Ajay Kumar Gupta, J.)