

30.01.2024
Item no. 110
Ct.34
(Suvendu)

C.R.R. 2749 of 2022

In the matter of :- Kakali Rani Majumdar @ Kakali Dey
... Petitioner

Mr. Shibaji Kumar Das
...for the petitioner

Ms. Anasuya Sinha
Ms. Jonaki Saha
.....for the State

Mr. Sourav Chatterjee
Mr. N.P.Agarwal
....for the O.P. 2

The subject matter of the revisional application relates to a challenge in respect of the order dated 19.07.2022 wherein the learned Judge, Special Court-cum- Addl. Sessions Judge, 1st Court, Hooghly at Chinsurah dismissed the application under Section 227 of the Code of Criminal Procedure filed at the instance of the present petitioner and considering the materials on record opined that there are grounds, prima facie, to frame charge under Section 302 of the Indian Penal Code.

Mr. Das, learned advocate appearing for the petitioner submits that the investigating agency and in particular specialized investigating agency on conclusion of investigation has submitted charge-sheet under Section 306 of the Indian Penal Code. As such, it was incumbent upon the learned trial court

while disposing of the application to exhaustively deal with the issue as to why the charge should not be framed under Section 306 of the Penal Code and only under Section 302 of the Penal Code and as to why the Court differs with the opinion of the investigating officer who had the occasion to deal with the witnesses along with the opinion of the experts.

Mr. Chatterjee, learned advocate for the Opposite Party No.2, on the other hand, opposes the contention advanced by Mr. Das and submits that the view expressed by the learned trial court for framing charges under Section 302 of the Indian Penal Code is a prudent view as the expert's opinion dealt in favour of the prosecution for framing charges under Section 302 of the Indian Penal Code.

To buttress such argument, Mr. Das submits that the oral evidence of the witnesses, the statement of the deceased in the Bed Head Ticket along with the history of the case do reflect that a case under Section 306 of the Indian Penal Code has been made out and the learned trial court while considering the charges failed to take into account the totality of the circumstances and only concentrated upon the report of the expert opinion.

Additionally it has been contended on behalf of the petitioner that there were no eye-witnesses to the incident and it was the deceased who survived for eight days is the best available witness who could have narrated regarding the incident which happened and in this case the learned trial court ignored the same and

arrived at its conclusion for expressing its views for framing charges under Section 302 of the Indian Penal Code.

Ms. Sinha, learned advocate appears on behalf of the State.

I have considered the submissions of Mr. Das, learned advocate appearing for the petitioner, Mr. Chatterjee, learned advocate appearing for the Opposite Party No. 2 and Ms. Sinha, learned advocate appearing for the State.

I have taken into account the statement of the scientific expert (CSW 36), namely Dr. Debasis Saha and the statement under Section 161 of the different witnesses.

Having considered the rival submissions and the documents which have been placed on record, I am of the view that the present stage of the case is of consideration of charges. At this stage, wherein the Court is to arrive at an opinion regarding the consequence for which the accused person is to answer the charge and the materials available in the records collected by the investigating agency suggests that there is a possibility of homicide and in that case, in the fitness of the circumstances, it would be fit and proper for the trial court to frame higher charges which the learned trial court at the end of the trial may reconsider.

Having regard to the observations made above and relying upon the documents placed by the respective parties, I am not inclined to interfere with the order dated 19th July, 2022 passed by the learned Judge, Special Court-cum- Addl. Sessions Judge, 1st Court, Hooghly at Chinsurah in Special Case no. 09 of 2017.

The case was initiated in the year 2014. More than nine and half years have passed since the incident happened. There is every possibility of the witnesses being reluctant now after such long period of time to come to Court.

Accordingly, the learned trial court is directed to frame the charges on the next date so fixed. Thereafter the learned trial court would fix a schedule of four days in every month as there are 47 witnesses to be examined.

The Commissioner of Police, Chandannagar Police Commissionerate would appoint an officer in the rank of Deputy Commissioner to act as a Nodal Officer who would, if required appoint two officers of his choice to inform the witnesses as and when summoned by the Court and to look that there is no unnecessary delay in the trial of the case.

All efforts be taken to conclude the trial at the earliest.

With the aforesaid observations, CRR 2749 of 2022 is disposed of.

Pending application, if any, is also disposed of.

Interim order, if any, is hereby vacated.

The observations made above are prima facie and the same should not stand in the way of the learned trial court at the stage of final argument or decision at the end of the trial.

All parties to act on the server copy of this order downloaded from the official website of this Hon'ble Court.

(Tirthankar Ghosh, J.)

