

CRR 3130 of 2022

**Akshay Choudhury & Anr.
Vs.
The State of West Bengal & Anr.**

For the Petitioners : Mr. Sekhar Kr. Basu, ld. Sr. Adv.
Mr. Kusal Kr. Mukherjee,
Ms. Shyanti Poddar.

For the State : Mr. Rudradipta Nandy, ld. APP
Ms. Sonali Das.

For the Opposite Party No. 2 : None.

1. Affidavit-of-service showing due service is filed. In spite of due service there is no representation on behalf of the opposite party no. 2.
2. The present revisional application has been preferred praying for quashing of the impugned order dated 31.05.2022 passed by the learned Additional District and Sessions Judge, 4th Court, Barasat, North 24 Parganas, while disposing an application filed by the accused under Section 227 of the Cr.P.C. in connection with Sessions Case No. 1078 of 2014 corresponding to Sessions Trial No. 17(5) 14, arising out of Bidhannagar South P.S. Case No. 30/13 dated 17.02.2013 under Sections 341/325/307/34 of the Indian Penal Code.
3. The learned counsel for the State is present.
4. **The relevant portion from the order under revision is being reproduced herein:-**

***“..... As per above observation charge
can be framed against the both the accused***

***U/s. 341/325/34 IPC which are all triable by
ld. Judicial Magistrate so I think record
should be sent to the Ld. Court of CJM,
Barasat with direction to frame the charge
against the accused as per above
observation and to conclude the trial as
expeditiously as possible.***

*Let the case record being No. GR 174/13
arising out of Bidhannagar PS30/17.02.2013
U/s. 341/325/34 IPC adding section 307 IPC be
sent to Ld. CJM Barasat.....*

***Sd/-
ADJ, 4th Court
Barasat, North 24 Parganas***

5. Section 228 of Cr.P.C. lays down:-

“228. Framing of charge.- (1) *If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-*

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

6. This Court finds that the said observation of the learned Sessions Judge is not in accordance with provision under

Section 228 of the Cr.P.C. and thus clearly not in accordance with law.

7. Considering the said fact and the materials on record, this Court finds that the order of the learned Magistrate is clearly not in accordance with law and the said order under revision is liable to be set aside.
8. Accordingly, the order dated 31.05.2022 passed by the learned Additional District and Sessions Judge, 4th Court, Barasat, North 24 Parganas, while disposing an application filed by the accused under Section 227 of the Cr.P.C. in connection with Sessions Case No. 1078 of 2014 corresponding to Sessions Trial No. 17(5) 14, arising out of Bidhannagar South P.S. Case No. 30/13 dated 17.02.2013 under Sections 341/325/307/34 of the Indian Penal Code, **is hereby set aside.**
9. The application under Section 227 of the Cr.P.C. is restored and the learned Magistrate is directed to **hear the application afresh** by giving an opportunity to both the parties and then by considering the materials on record dispose of the same in accordance with law within a month from the date of this order.
10. **The present revisional application being CRR 3130 of 2022 is, thus, disposed of.**
11. All connected Applications, if any, stands disposed of.
12. Interim order, if any, stands vacated.
13. Copy of this order be sent to the learned Trial Court for necessary compliance.

- 14.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)