

C.R.R. 2841 of 2019
Sudha Singh
Vs.
State of West Bengal & Ors.

Mr. Pratip Kumar Chatterjee, Sr. Adv.
Mr. Ashish Deb,
Ms. Kanta Roy
Mr. Tridip Mishra
Ms. Maitrayee Chatterjee *...For the Petitioner*

Mr. Madhusudan Sur, APP
Mr. Monoranjan Mahata *...For the State*

The original case docket is placed before me terms of earlier order.

Being aggrieved by and dis-satisfied with the order dated 2nd August, 2019 passed by the learned Additional Sessions Judge, Fast Track Court, Asansol in SC Case No. 134 of 2018, petitioner / complainant has preferred the present application.

By the impugned order learned Sessions Court below after considering the materials on record found that no prima facie case made out under section 307 of the IPC and as such he held that the offence is triable by the Court of a Magistrate and thereby he sent back the case record to the Court of learned Chief judicial Magistrate for disposal of the case.

Being aggrieved by the said impugned order Mr. Pratip Kumar Chatterjee, learned Senior Counsel appearing on behalf of the petitioner submits that accused persons / private opposite parties herein inflicted inhuman torture upon the victim / petitioner and she was also manhandled for non-payment of their demanded amount of money. He

further submits that on 27th November, 2015 the witness No. 4 got information that the opposite party No. 2 caught hold the locks of hair and the opposite party No. 3 tried to throttle the complainant in order to kill her. However, she could save her live somehow with the intervention of the local people and after lodging a General Diary before the Officer-in-Charge, Chittaranjan Police Station, she was taken to the Asansol District Hospital for treatment and after a month treatment complainant somehow recovered. Thereafter, again on 2.3.2016 the complainant was further assaulted by opposite party Nos. 2, 3 and 5 as the complainant raised voice against the attempt of outraging her modesty by the opposite party No. 4 and in the meantime all the accused persons brutally beaten her with lathi and other deadly weapons and she was driven out from her matrimonial home and even her small daughter was not spared and the opposite party No. 5 kicked the daughter. Thereafter, the complainant took shelter at her elder sister's house. He further submitted that the accused persons were booked under Section 307 of the IPC and after completion of investigation, police has also submitted charge sheet against the accused persons, inter alia, under Section 307 of the IPC. In such circumstances, the Court below was not justified in coming to a conclusion that the offence under Section 307 does not lie against the accused persons or that for that reasons the offence is not triable by the Court of Sessions. He further submits that the Trial Court erroneously observed that the petition under Section 239

of the Cr.P.C. is allowed and thereby the accused persons were discharged though he sent the case record before the Court of learned Chief Judicial Magistrate for disposal of the case, which itself is anomalous.

In such view of the matter Mr. Chatterjee submits that the order impugned is not sustainable in law and is required to be interfered by invoking Courts' jurisdiction under Section 482 of the Cr.P.C. Mr. Chatterjee in this Context relied upon the judgment in the case of *State of Madhya Pradesh Vs. Kedar Yadav*, reported in AIR OnLine 2006 SC 643 to substantiate his contention that though there may not be existence of any external bodily injury, but still the accused can be convicted under section 307 IPC if the allegations are proved beyond reasonable doubt by the prosecution witnesses in respect of the allegation of attempt to murder. In this context he also relied upon another judgment in the case of *State through Deputy Superintendent of Police Vs. R. Soundirarasu Etc.*, reported in 2022 LiveLaw (SC) 741.

The private opposite parties are not represented.

Mr. Sur, learned Counsel appearing on behalf of the State placed the Case Diary and leaves the prayer of the petitioner to the discretion of the Court.

It is not correct proposition of law that at the time of framing of charge the trial court is debarred from applying it's judicial mind to the consideration whether or not there is an ground for presuming the

commission of the offence by the accused. Of course it is the duty even at this stage to consider judicially, whether the materials placed before him justify the framing of the charge under any particular section or under other section(s) and it is not expected that he will blindly accept the sections under which the accused has been asked to face a trial. What is not permissible at this stage to make roving enquiry into the pros and cons of the matter and/or weigh the evidence as if he is conducting a trial. But it is always open to trial court to consider whether or not a prima facie case under that particular provisions against the accused has been made out or not.

I have gone through the injury report as well as the statements of the witnesses recorded under Section 161 of the Cr.P.C. and other materials placed before me. From the materials available in the record I find that the allegation under Section 307 has not been made out against any of the accused in the present context and as such I find no perversity in the order impugned.

The order impugned dated 2nd August, 2019 thus does not call for any interference. However, it is clarified that the concerned Magistrate shall conduct a charge hearing after giving opportunity to both the parties to contest, in connection with the other sections in respect of which the charge sheet have been submitted against the accused persons and thereafter will proceed in accordance with law.

The personal appearance of the Officer-in-Charge, Asansol

North Police Station is waived.

The application, being C.R.R. 2841 of 2019 thus stands disposed of.

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

(Dr. Ajoy Kumar Mukherjee, J.)