

28.02.2025
Court No. 35
Item No.10
Rakib

W.P.A. 30405 of 2024
Mousumi Khatun.
VS
The State of West Bengal & Ors.

Mr. Sabyasachi Chatterjee.
Mr. Omar Faruk Gazi,
Mr. Sayan Banerjee.
... for the Petitioner.
Mr. K. J. Yusuf, Ld. AGP,
Mr. Sourav Chaudhuri.
... for the State.

I have perused the Case Diary, as also the orders passed by the learned Magistrate and also taken into account the stage of the case. Having considered that the investigating agency has submitted their charge-sheet under Sections 126(2)/74/115(2)/3(5) of BNS and considering the statements of the witnesses, particularly that of the complaint and that at the stage of consideration of charges it is a settled proposition of law that higher charges should be incorporated at the time when the case is initiated and it would be for the learned trial Court at the end of the trial to consider regarding the applicability of the sections, so far as proof is concerned, I am of the view that interference is called for.

At this stage, I believe since Abdul Barek has finally died which was an outcome of the incident as complained of and such version has been corroborated by the witnesses concerned. The ocular evidence which has an overriding effect over the expert evidence should be taken into account, consequently, I am of the opinion that

Section 110 of the BNS on which the investigation commenced should have been there in the charge-sheet. Accordingly, the learned trial Court is directed to consider the said section in the background of the materials available before the trial Court at the stage of consideration of charges.

Petitioner is also aggrieved regarding certain accused persons having been discharged, however, since the charge-sheet has already been submitted, so far as the individuals who have been discharged, if evidence surfaces in course of the trial. If an application under Section 358 of the BNSS is filed at the appropriate stage, the learned trial Court will consider the same in accordance with law.

With the aforesaid observations WPA 30405 of 2024 is disposed of.

Report submitted by the State be kept with the record.

Case Diary be returned to the learned advocate appearing for the State.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

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

(Tirthankar Ghosh, J.)