

Sk. Noor Mohammad Vs. the State

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Court : Kolkata

Decided On : Feb-03-1958

Reported in : AIR1959Cal276,1959CriLJ586,62CWN717

Judge : J.P. Mitter and ;Debabrata Mookerjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173, 173(2) and 251A

Appeal No. : Criminal Revn. No. 28 of 1957

Appellant : Sk. Noor Mohammad

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutta, Adv.

Judgement :

J.P. Mitter, J

1. This is a petition for revision of two orders made by a learned Magistrate, dated respectively October 31, 1956 and November 7, 1956, directing charges to be framed against the petitioner under Sections 304A and 337 of the Indian Penal Code. The prosecution concerned was the result of an explosion at a manufactory for making explosives. The petitioner was the owner of the manufactory.

2. Mr. Ajit Kumar Dutt appearing on behalf of the petitioner has contended that in deciding to frame the charges the learned Magistrate went beyond the scope of Section 251-A of the Code of Criminal Procedure. It is said that the learned Magistrate had looked into the relative case diary in addition to the documents referred to in Section 173. Mr. J.M. Banerjee appearing on behalf of the State has contended that the Court was entitled under Section 172 of the Code to peruse the case diary and that its power to do so is not limited by Section 251-A.

3. Having examined the impugned orders, we are of the view that the learned Magistrate allowed himself to be influenced by the case diary in framing the charges concerned. Under Section 251-A the Court is not permitted to found a charge upon documents other than those referred to in Section 173. Section 251-A, however, does not preclude a Court from perusing case diaries. This is provided by Section 172. Sub-section (2) of Section 172 expressly provides that the materials to be found in Police Diaries are not to be treated as evidence in the case, but may, nevertheless, afford an aid to the Court in any enquiry or trial. Notwithstanding this provision, we take the view that for the purpose of framing a charge, as provided under Section 251-A of the Code, the Court is entitled to consider only the documents referred to in Section 173. That being, the position, we must set aside the orders complained of and quash the charges.

4. Let the case be dealt with afresh by some other learned Magistrate to be nominated by the District Magistrate.

Debabrata Mookerjee, J.

5. I agree.