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Court : Kolkata

Decided On : Apr-26-2010

Judge : Ashim Kumar Roy, J.

Acts : Indian Penal Code (IPC) - Sections 34, 307, 325 and 326

Appeal No. : C.R.R. No. 2936 of 2009

Appellant : Surajit Basak and ors.

Respondent : State of West Bengal and anr.

Advocate for Def. : Swapan Kumar Mullick, Adv. for O.P. No. 2 and; Kashem Ali Ahmed, Adv. for State

Advocate for Pet/Ap. : Joy Sengupta and; Imran Siddiqui, Adv.

Disposition : Petition dismissed

Judgement :

Ashim Kumar Roy, J.

1. Against an order of framing of charge under Sections 307/326/34 of the Indian Penal Code against all the petitioners and under Section 325 of the Indian Penal Code against the petitioner No. 1, they have moved this Court for quashing of the same.

2. It has been vehemently contended that the First Information Report which gave rise to the Sessions Trial in question where the impugned charge has been framed is based on false, frivolous and malicious allegations. It was also contended that the defacto-complainant was going on starting one after another criminal cases against the petitioners to keep them busy with those cases and taking advantage of the same to enjoy the ancestral properties of the petitioners.

It has finally been contended that no evidentiary materials have been collected by the police during investigation which justify the order of framing charge as against the petitioner No. 3 Gopal Das @ Debashish Das is concerned, there is no materials for framing of charge under Section 307 of the Indian Penal Code.

On the other hand, Mr. Swapan Kumar Mullick, learned advocate appearing on behalf of the defacto-complainant vehemently opposed the prayer for quashing and submitted sufficient materials have been transpired justifying framing of the charge.

Mr. Kashem Ali Ahmed for the State also opposed the prayer for quashing and having produced the Case Diary submitted that during investigation, sufficient materials have been gathered showing the petitioners complicity in the commission of the offences for which they have been now charged in the trial in question.

3. It is a settled legal position that if on the basis of evidentiary materials the prosecution proposed to rely against the accused during the trial there could have been a formation of opinion by Court that the accused might have committed offence the charge can always be framed. At this stage it is not required for the Court to see whether on such materials the conviction of the accused is possible or not. At the stage of framing charge the probative value of the materials on record cannot be gone into and the materials which have been brought before the Court by the prosecution has to be accepted at their face value to be true. The question whether the accused has committed the offence or not is a matter that can only be decided after the conclusion of the trial.

The ground on which the petitioner has raised before this Court for quashing of the order of framing charge are all disputed question of facts and essentially their defence and the same can only be gone into during the trial.

4. Now, having gone through the Case Diary, I find that there are sufficient evidentiary materials to justify the framing of charge. I find the defacto-complainant after the alleged incident both before the police and to the doctor who treated her, categorically disclosed that the petitioners conjointly attacked her and the petitioner No. 2 with the intention to kill her laid her on the floor and throttled her and other accused persons also helped him. It also appears the doctor found a deep cut injury on the upper lip of the defacto-complainant as well as injuries on the person of Chabi Das, the witness and mother of the defacto-complainant. It further appears that the said witness also disclosed before the doctor as well as to the police against the petitioners for causing such injuries.

This Court has been given to understand that already trial has commenced and one witness has been fully examined and the examination-in-chief of another witness has already been completed.

This criminal revision has no merit and accordingly stands dismissed. Interim order, if any, stands vacated.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

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