
(2006) 12 CAL CK 0043
In the Calcutta High Court
Case No : C.R.R. No. 3136 of 2005

Mina Patel

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 228, 228(1), 240(1)
Penal Code, 1860 (IPC) — Section 148, 149, 307, 320, 323

Citation : (2007) CriLJ 3011

Hon'ble Judges : Partha Sakha Datta, J

Bench : Single Bench

Advocate : Abhra Mukherjee, for the Appellant; Rabi Sankar Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Partha Sakha Datta, J.—This revisional application is directed against the judgment and order dated 8-8-2005 passed by the learned Additional Sessions Judge, First Court, Purulia in Criminal Revision No. 37 of 2005 setting aside thereby the order dated 16-1-2004 passed by the learned Assistant Sessions Judge, Purulia in Sessions Case No. 81 of 2002 who by his order transmitted the case u/s 228(1)(a) of the Criminal Procedure Code to the learned Chief Judicial Magistrate, Purulia for disposal according to law.

2. A petition of complaint was lodged against the petitioner by the complainant alleging certain offences u/s 148/149/326/307/341, IPC on the ground that at about 11 a.m. on 13-9-2000 the petitioner/accused took out an iron rod from one of his labourers and assaulted the complainant on his forehead causing thereby grievous bleeding injuries on his persons and when the complainant fell down one of the labourers of the petitioner/accused dealt a blow of lathi on the right hand of the complainant thereby causing fracture injury on his hand.

3. The petition of complaint as aforesaid became the FIR via Section 156(3) Cr.P.C. and the Purulia Town Police Station submitted chargesheet against the

petitioner on 30-11-2000 u/s 341/323/326/307,IPC.

4. The case being communicated to the Court of Session the learned Sessions Judge of Purulia transferred the case to the learned Assistant Sessions Judge of his sessions division who by the order dated 16-1-2004 came to the opinion that the case would be one under Sections 341/324, IPC and accordingly transmitted the case u/s 228(1)(a) Cr.P.C. to the learned Chief Judicial Magistrate, Purulia for trial.

5. After elapse of more than a year since the learned Assistant Sessions Judge had transmitted the case to the learned C.J.M., Purulia the defacto complainant filed a revisional application before the learned Sessions Judge, Purulia against the said order of the learned Assistant Sessions Judge with an application for condonation of delay. The learned Sessions Judge transferred the revisional application to the learned Additional Sessions Judge, First Court, Purulia for disposal.

6. The learned Additional Sessions Judge, First Court, Purulia condoned the delay, though not with a speaking order, and allowed the revisional application mainly on two-fold grounds namely (1) the provision of Clause (a) of Sub-section (1) of Section 228, Cr.P.C. makes it obligatory upon the learned Assistant Sessions Judge, Purulia to frame a charge before remitting the case to the learned C.J.M., Purulia and since the learned Assistant Sessions Judge has not done so the order was unlawful and liable to be set aside, and (2) the opinion of the learned Assistant Session Judge that the case would fall under Sections 341/324 of the IPC was not sustainable since even if the case would not be one u/s 307 of the IPC it should have been u/s 326, IPC on the ground that the de facto complainant-injured, in terms of the injury report had been in the hospital for the period from 13-9-2000 to 16-10-2000 which squarely falls under the clause, "Eighthly. Any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain, or, unable to follow his ordinary pursuits. In the order impugned the learned Additional Sessions Judge made some unhappy remarks against the learned Assistant Sessions Judge observing that finding of the learned Assistant Sessions Judge was a biased one, that the learned Judge did not adopt the legal procedure, that he did not go through the provisions of the law as well as ingredients of the charge as laid down in Section 320 of the IPC and that he should go through the provisions of the law very seriously before passing any such order.

7. Mr. Abhra Mukherjee, learned Advocate for the petitioner submitted that the order of the learned Additional Sessions Judge on both the counts is itself unlawful and the strong words used in the judgment are not at all illustrative of sobriety and humility. It has further been submitted that the application for condonation of delay of more than one year was disposed of in a single sentence without assigning any reason therefor. It has been submitted that having regard to the nature of injuries which are (i) lacerated wound at the left side of forehead about 3" x 1/4" x bone, (ii) lacerated wound at the right finger 1/2" x 1/4" x bone

and (iii) abrasion at the left maxillary region 2" ? 1/4" it cannot be said that the injuries were at all grievous and would fall u/s 326 of the IPC because to charge one u/s 326 of the IPC grievous hurt has to be caused by means of substances as enumerated therein and it cannot be said that the injuries were caused to the de facto complainant by weapons or means or instruments as enumerated in the said section. It has been submitted that it is the case in the FIR that the petitioner caused assault by means of an iron rod which is neither an instrument for shooting, stabbing or cutting and by which death was not likely having regard to the nature of the injuries reflected in the injury report nor the injuries were effected or caused by other means as detailed in the said Section 326, IPC. Therefore, it is submitted that any sort of grievous hurt will not necessarily fall for punishment u/s 326, IPC. It is further submitted by Mr. Mukherjee that the mere fact that the injured was in the hospital for 20 days does not necessarily mean that the injuries were grievous since remaining in the hospital for a space of 20 days cannot be taken as equivalent to proof of grievous hurt. The second submission is that the words "he may frame a charge" as occurring in Clause (a) of Sub-section (1) of Section 228, Cr.P.C. does not necessarily mean that the Sessions Judge shall have to frame charge because here the word "may" is only directory and by no stretch of imagination it can be construed as mandatory and the entire approach of the learned Additional Sessions Judge is unsustainable in law and is liable to be set aside.

8. None appears for the de facto complainant though service was effected as per affidavit of service filed.

9. I have heard the learned Advocate for the State.

10. It appears from bare reading of Section 228 of the Cr.P.C. that if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of session he "may" frame a charge and transfer the case to the Chief Judicial Magistrate, while if the offence is exclusively triable by the Court of session the Judge "shall" frame a charge in writing. Thus when the Sessions Judge finds that the offence is exclusively triable by the Court of session he shall have to frame a charge which is a mandate of the law but such mandate is distinctly absent when the Sessions Judge is of the opinion that the offence is not exclusively triable by the Court of Session. Having gone through the provision it appears that when the case is committed to the Court of session the Sessions Judge is obligated upon to find out whether a case exclusively triable by the Court of session has been made out and framing a charge becomes a mandate when a case exclusively triable by the Court of session is so made out because in that case the Judge has to take up the trial and trial commences with the framing of charge. Thus reading between the lines of Clause (a) and the Clause (b) it appears that the word "may" as appearing in Clause (a) is merely director, while the word "shall" in Clause (b) is mandatory. The reason is not far to seek. When the case is not exclusively triable by the Court of session it is the Chief Judicial Magistrate who has to proceed with

the trial and the trial with the charge framed by the Chief Judicial Magistrate under the appropriate section of the law does not become a nullity simply on the ground that the charge was not framed by the learned Sessions Judge. Thus framing of charge becomes a mandate on the part of the Court of session or the magistrate which or who as the case may be is competent to hold the trial. This reasoning finds support also from a decision of State Vs. Y.V. Mehra and Others, wherein it was observed that it is within the discretion of the Sessions Judge whether to frame a charge and then transfer the case or leave it to the Chief Judicial Magistrate to undertake that exercise before embarking upon the trial of the case and this would not vitiate the proceedings. It appears that the word "shall" appear in Clause (b) of Sub-section (1) of Section 228 when a Court of session has to try a case exclusively triable by the Court of session and the same word "shall" again appears in Sub-section (1) of Section 240 when the Magistrate finds that an offence has been committed and he is competent to try such offence. The legislature thus for obvious reasons has used the word "may" in Clause (a) of Sub-section (1) of Section 228 and had it been the intention of the legislature that even in a case not triable by the Court of Session the Court of session before remitting the case to the Chief Judicial Magistrate ought to frame charge then the word "shall" would have been used in Clause (a) also instead of the word "may" and the distinction between (a) and (b) is distinctly perceivable. There is no need to read "may" as appearing in Clause (a) of Sub-section (1) of Section 228 as "shall" inasmuch as the trial of the case as categorized in Clause (a) was not to be conducted by the learned Sessions Judge and "shall" applies only to the case exclusively triable by the Court of Session. Normally, the word "may" is taken in its natural, i.e. permissive sense, and not in an obligatory one and in matters of procedure even the mandatory words sometimes are construed as director. "May" and "shall" are generally used in contradistinction to each other and ordinarily they should be given their natural meaning particularly when the two words occur in the same section as in the instant case, in Clauses (a) and (b) of Section 228, Cr.P.C. By construing the word "may" in the context as directory, though at times depending upon certain situations it may convey a message of compulsiveness which is not here in the instant case, no absurd or inconvenient consequence ensues nor any prejudice is caused to the parties to the proceeding nor such construction, as said above, appears at variance with the intent of the legislature. Thus, when the Court of session does not find the case exclusively triable by it it has to remit the case to the Chief Judicial Magistrate either with framing charge or without framing charge and the word "may" as occurring in Clause (a) does not convey a sense of compulsiveness or obligation. The further observation of the learned Additional Sessions Judge that the learned Assistant Sessions Judge should have, after framing charge, read over and explain the charge to the accused appears to be erroneous because once the Sessions Judge after framing charge reads it out and explains the same to the accused he has to take the plea of guilt or not-guilt of the accused and when he accepts the plea he becomes the trial Judge in a non-sessions triable case which does not appear to be permissible under the law.

11. The question whether the offence falls u/s 326 or 324 of the IPC does not in the circumstance call for any consideration by this Court because once this Court finds that the remission of the case to the learned Chief Judicial Magistrate without framing charge was not an illegality it is the learned Chief Judicial Magistrate who is competent to frame charge upon hearing the parties and on perusal of the materials made available before him. It has to be said here that the learned Additional Sessions Judge while allowing the revisional application before him did not differ with the learned Assistant Sessions Judge that the case was not one u/s 307 of the IPC and hence was not exclusively triable by the Court of session. Thus, when the case falls for trial by the learned Chief Judicial Magistrate it is he who in course of consideration of charge shall have the opportunity of hearing arguments of the learned Counsel for the parties and perusing material so as come to his own independent decision being uninfluenced by any of the observations made by the learned Additional Sessions Judge or by the learned Assistant Sessions Judge or by this Court and it is made clear that I have not gone into merit of the charge at all.

12. While parting with the case it is to be said with reference to the strong words used by the learned Additional Sessions Judge against the learned Assistant Sessions Judge that strong words do not necessarily convey strong ideas and human reasoning being not infallible because of limitation of intellect it is the reason in the judgment impugned that is to be attacked within the confines of law and reason but not the reasoner in person.

13. The revisional application is thus allowed, and the order of the learned Additional Sessions Judge, First Court, Purulia is set aside. The learned Chief Judicial Magistrate of Purulia shall proceed with the case in the light of the observations contained in the body of the judgment.

14. A copy of the order each shall be transmitted to the learned Additional Sessions Judge, First Court, Purulia, learned Assistant Sessions Judge, Purulia and the learned Chief Judicial Magistrate for information and necessary action.

15. Urgent Xerox certified copy may be provided if applied for.