
(2014) 03 CAL CK 0034
In the Calcutta High Court
Case No : Writ Petition No. 37709(W) of 2013

Samsur Nihar Bibi

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304, 307, 325, 326

Citation : (2015) 1 CHN 250

Hon'ble Judges : Ashim Kumar Roy, J.

Bench : Single Bench

Advocate : Sabir Ahamed and Mujibar Ali Naskar, for the Appellant; Anami Sikder, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.?The petitioner is the de facto complainant of Murshidabad Police Station Case No. 47/2013 under sections 341/326/307 of the Indian Penal Code, which is now pending before the learned Additional Chief Judicial Magistrate, Murshidabad being G.R. Case No. 319/2013. After conclusion of the investigation police submitted chargesheet under sections 341/325/307/304 of the Indian Penal Code. Now, it is the case of the petitioner that having regard to the materials collected during investigation more grievous offence punishable under section 302 of the Indian Penal Code has been made out, still police with utter mala fide submitted charge-sheet for lessor offence.

2. From the side of the State, case diary is produced and it is submitted on the basis of the materials collected during investigation, police has submitted chargesheet and there is no intention on the part of the Investigating Agency to show some concession to the accused persons. He further submitted that although many allegations have been made against the police but there is no iota of materials to substantiate the same.

3. Heard the learned Counsel appearing on behalf of the parties.

4. Perused the case diary and other materials on record.

5. The petitioner is aggrieved with the submission of charge-sheet for lesser offences. According to his case, instead of offence punishable under section 304 of the Indian Penal Code, the material disclosed commission of offence punishable under section 302 of the Indian Penal Code. Therefore, it is prayed by issuing a writ of mandamus, the police be directed to submit chargesheet for the offence punishable under section 302 of the Indian Penal Code.

6. If the de facto complainant of a case is aggrieved with non-submission of a charge-sheet for any particular offence, may be for any graver offence, his remedy is available under the Code of Criminal Procedure by filing a protest petition before the concerned Judicial Magistrate before whom such charge-sheet has been submitted. Then it is for the Magisterial Court to examine the charge-sheeted materials and then to conclude whether on these materials gathered during investigation, the case of the de facto complainant has been made out or not. The Magistrate is never bound by the conclusion arrived at by the police and it is open to him to proceed against the accused persons for graver offences than the offences for which charge-sheet has been submitted, if he finds there are justifiable materials. In exceptional case, a Magistrate can also direct for further investigation. Thus on the face of statutory alternative remedy available to the writ petitioner before a Competent Court of law and such remedy undoubtedly being efficacious and adequate, this writ application fails and stands dismissed. Urgent photostat certified copy of this order, if applied for, be given to the learned advocate for the parties as early as possible.