

**(2017) 01 CAL CK 0084**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 138 of 2015**

Sri Kali Charan Shaw

APPELLANT

Vs

The State of West Bengal

RESPONDENT

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**Date of Decision :** 20-01-2017

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 154, Section 216, Section 218,  
Section 464, Section 482  
West Bengal Fire Services Act, 1950 — Section 11J

**Citation :** (2017) 1 CalCriLR 683 : (2017) CriLJ 2385

**Hon'ble Judges :** Sankar Acharyya, J.

**Bench :** Single Bench

**Advocate :** Mr. J.K. Bhattacharya, Mr. Tapas Kumar Chatterjee and Mr. Sanjoy Ghosh, Advocates, for the petitioner; Mr. Arnav Chatterjee and Mr. Paban Kumar Gupta, Advocates, for the State

**Final Decision :** Allowed

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## Judgement

Sankar Acharyya, J.—This is an application under Article 227 of the Constitution of India filed by the petitioner challenging three orders dated 06.03.2014, 07.06.2014 and 19.11.2014 passed by learned Judicial Magistrate, 5th Court, Barrackpore in G.R. Case No. 1784 of 2012 arising out of Khardah P.S. Case No. 276 of 2012. Petitioner has been made accused in that case. In the impugned order dated 06.03.2014 learned Magistrate passed the following order.

"Accused person on bail is present.

Learned A.P.P. is also present.

Heard both sides. Perused the papers referred to u/s 173 Cr.P.C.

It appears prima facie that, the accused person has committed offences punishable under Sections 11J/26 of West Bengal Fire Services Act, 1950.

So a charge under the above Sections is framed, read over and explained to the

accused person who pleaded not guilty by saying "Ami Nirdos" and claimed to be tried.

Fix 07.06.14 for evidence of CSW ? 1.

Issue summon accordingly.

Accused person is as before".

2. On 07.06.2014 and 19.11.2014 the petitioner as accused remained present in the Court below but due to absence of witness evidence was not recorded on those dates and the case was adjourned.

3. Petitioner has challenged those orders on the grounds that a false and frivolous criminal case with allegation of cognisable offence has been brought against him by a delayed FIR dated 22.04.2012 relating to an occurrence dated 19.04.2012. Inter alia, further contention of the petitioner is that learned Judicial Magistrate framed unjustified combined charge under Sections 11 J and 26 of the West Bengal Fire Services Act, 1950. He has prayed for quashing of the impugned orders with a further prayer for a direction upon respondent for opening the padlock of the petitioner's show room which was put during investigation of the case.

4. As per FIR lodged on 22.04.2012 against the petitioner the State prosecution alleged in substance that the petitioner is a whole - sale kerosene oil dealer. On 19.04.2012 fire broke out in his business premises and Fire Services authority extinguished the fire. The petitioner, without having licence used to refill L.P.G. to automobiles from domestic L.P.G. cylinders in the ground floor of the premises which is a "High Risk Buildings" where fire broke out. He had also stock of huge quantity of kerosene oil without following the fire prevention safety measures. The petitioner remained untraced and did not produce relevant documents before the informant Station Officer of Lalkuthi Fire Station for which delay was caused in lodging the FIR.

5. At the time of hearing learned advocate for the petitioner submitted that G.D.E. no. 1561 dated 19.04.2012 was made at Khardah police station relating to the occurrence but certainly there was no allegation of commission of any cognisable offence but subsequently on 22.04.2012 the after - thought FIR was lodged with fabricating story against petitioner.

6. He submitted that such an FIR cannot be a foundation of a criminal proceeding. He cited a decision of a Division Bench of this High Court in the case of Mannalal Khatic v. The State reported in AIR 1967 Calcutta 479. He further submitted that framing of combined charge for two distinct offences under Sections 11 J and 26 of the West Bengal Fire Services Act, 1950 is not proper in a criminal trial. He submitted for setting aside the impugned orders and for quashing the whole proceedings.

7. Learned advocate for the state submitted that in the absence of any

information with allegation of cognisable offence no FIR under Section 154 of the Code of Criminal Procedure, 1973 can be registered at police station and in this case also the FIR was lodged on 22.04.2012 only when it was noticed that the petitioner committed cognisable offence of dealing in inflammable LP Gas without having licence and using domestic L.P. Gas cylinders for commercial purpose violating the provisions of The West Bengal Fire Services Act, 1950 and L.P.G. Rules and Liquefied Petroleum Gas Control Order 2001.

8. Having gone through the cited decision it appears to me that the case discussed in *Mannalal Khatic v. State* (Supra) is totally dissimilar to this case. Moreover, in the reported case a judgment after full trial was under challenge and evidence recorded during trial was considered. Here, the facts scenario is different. In the instant case, a general diary was recorded on 19.04.2012 at police station relating to an incident of breaking out fire in the premises of the petitioner but there was no recording of happening of any cognisable offence as apprised by learned advocates. On 22.04.2012 the FIR with allegation of commission of cognisable offence was lodged at police station with reference to the same incident of 19.04.2012. Whether such an FIR is based on after though fabricated story or not is a matter of evidence. It is not the proper stage to consider that aspect and whether delay in lodging FIR is justified or not is also a matter of evidence. In this proceeding this Court cannot undertake a mini trial. As such, the ratio of the cited judgment does not fortify the arguments advanced before me by learned advocate for the petitioner for quashing the proceedings in the Court below.

9. Having gone through the impugned order dated 06.03.2014 it appears that a composite charge of offences punishable under Sections 11 J and 26 of the West Bengal Fire Services Act, 1950 has been framed against the accused petitioner.

10. Chapter IIIA of the West Bengal Fire Services Act, 1950 deals with "Fire Prevention and Fire Safety" and Section 11 J of that chapter is a penal provision for contravention of provisions of that chapter. As per allegations of prosecution the petitioner as accused contravened the provisions of Section 11 C of that chapter. Further allegation of prosecution is that the accused contravened the provisions of Section 12 of Chapter IV of that Act. Chapter IV relates to "Licence for storing hazardous substances". Section 26 of that Act is the provision of penalty in Chapter - V of the Act for not taking out a licence for a warehouse or workshop.

11. Charge as framed in the trial Court has not been brought by petitioner on record in this case. Defect, if any, in framing charge does not invalidate a criminal proceeding. Defect may be cured at any stage by alteration or modification of charge unless failure of justice is occasioned thereby in view of the provisions under Section 464 read with Section 216 of the Code of Criminal Procedure, 1973. Chapter XVII in the Code of Criminal Procedure, 1973 deals with the charge in a criminal trial. As per Section 218 of that chapter separate charges for every distinct offence of which any person is accused should be

framed. As submitted by the learned advocates no evidence has yet been recorded in the trial Court. As such, learned Magistrate, if thinks fit and not prejudicial to either party may alter or modify the charge in terms of Section 218 of the Code of Criminal Procedure, 1973 for which interference of this Court is not necessary. Be it made clear that the defect in framing charge as per order dated 06.03.2014 as pointed out by the learned advocate for the petitioner, if any, is an irregularity curable by trial Court on prayer of a party or on his own motion and it is not an illegality which may vitiate the whole proceeding. With such observations I find no reason to set aside the impugned orders or to quash the whole proceeding as prayed for. Accordingly, this revisional application is disposed of.

12. Interim order, if any, stands vacated.