

Criminal Revision  
Present: The Hon'ble Justice Ashim Kumar Roy

Judgment On : 05-05-2010

*C.R.R. No. 1682 of 2007*

Tarun Khandait  
versus  
State of West Bengal & Ors.

**Points**

FURTHER INVESTIGATION- Police collected materials for a particular offence- Charge Sheet for the same not submitted- Whether a ground for re-investigation-Code of Criminal Procedure 1973, S401

**Facts:**

In the F.I.R. along with other charges a case for an offence punishable under Section 307 of the Indian Penal Code has been made out but still police has not submitted charge-sheet for the said offence. The petitioner filed this instant application seeking further investigation on that ground.

**Held:**

Although on the evidentiary materials collected by the police a particular offence has been made out still police has not submitted charge-sheet for the same is no ground for re-investigation of the case. In this case no charge has been framed and no trial has been commenced and matter is still pending for supply of copy to the accused persons. Thus , at the stage when the case shall be taken up by the Court below for consideration of the question of framing of charge if it appears to the Court that there is ground for presuming that accused persons have committed an offence which the

Learned Magistrate is not competent to try and the same ought to be tried by the Court of Sessions nothing would preclude the Magistrate to commit the case for trial to the Court of Sessions. **Para-4**

For Petitioner : Mr. Mainur Rahaman

For State : Mr. Kasem Ali Ahmed

### **The Court**

The petitioner who happened to be the defacto-complainant of the Ketugram Police Station Case No. 6 of 2007, now being pending before the Learned Additional Chief Judicial Magistrate, Katwa being G.R. Case No. 14 of 2007, under Sections 147/148/149/323/325 of the Indian Penal Code has moved this Court against an order passed in connection therewith, whereby the petitioner's prayer for further investigation of the case has been rejected.

2. The learned advocate appearing on behalf of the petitioner submitted before this Court that initially the FIR was recorded for an offence punishable under Sections 147/148/149/323/325/307 of the Indian Penal Code. However, after investigation police has submitted chare-sheet under Sections 147/148/149/323/325 of the Indian Penal Code. The entire grievance of the petitioner is this that although a case for an offence punishable under Section 307 of the Indian Penal Code has been made out still police has not submitted charge-sheet for the said offence.

3. Heard the Learned Counsels appearing on behalf of the parties. Perused the Case Diary and more particularly the order impugned.

4. Having regards to the submissions made on behalf of the petitioner, it appears the petitioner prayed for further investigation of the case on the ground that charge-sheet has not been submitted under Section 307 of the Indian Penal Code, although there was sufficient materials on record. In my opinion, on the contention that although on the evidentiary materials collected by the

police a particular offence has been made out still police has not submitted charge-sheet for the same is no ground for re-investigation of the case. It is well settled the Court is not bound by the conclusion arrived at by the police as regards to what offence has been committed and even if no charge-sheet is submitted for any particular offence when the evidentiary materials disclose commission of such offence, the Court is not precluded from proceeding against the accused for such offence. In this case no charge has been framed and no trial has been commenced and matter is still pending for supply of copy to the accused persons. Thus, at the stage when the case shall be taken up by the Court below for consideration of the question of framing of charge if it appears to the Court that there is ground for presuming that accused persons have committed an offence which the Learned Magistrate is not competent to try and the same ought to be tried by the Court of Sessions nothing would preclude the Magistrate to commit the case for trial to the Court of Sessions. In my opinion, the petitioner has not been able to make out a case for further investigation. I do not find any illegality or infirmity in the order passed by the Learned Magistrate which deserves any interference.

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

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

*( Ashim Kumar Roy, J. )*