

CRIMINAL REVISION
PRESENT :
THE HON'BLE JUSTICE MRINAL KANTI SINHA
Judgment on 20.08.2010
CRR NO. 2810 of 2008

Smt. Brinda Ray (Nee Nag)
Vs.
The State of West Bengal

Points:

Scope of Revision: Order of the Sessions Judge neither perverse, nor illegal, nor there was non-application of mind, nor non-consideration of materials on record- whether can be interfered in revision- Code of Criminal Procedure, 1973 S.401

Facts:

Investigating Officer submitted charge-sheet against the opposite parties no. 1 to 5 under Sections 498A/420 of Indian Penal Code and 3 and 4 of the Dowry Prohibition Act, 1961, and also under Section 406 of the Indian Penal Code by way of supplementary charge-sheet after further investigation under Section 173(8) Cr.P.C. After hearing the parties and considering the materials on record learned Additional Chief Judicial Magistrate framed charges against five accused persons. . Learned Sessions Judge, Barasat, partly allowed the revisional application of the accused petitioners, whereby she ordered that the accused no. 4, 5 be acquitted from the charges.

Held:

The impugned order passed by the learned Sessions Judge, North 24-parganas, was neither perverse, illegal nor there was any non-application of mind and non-consideration of materials on record, nor there was any abuse of process of Court. As such learned Sessions Judge, North 24-parganas, has not committed any such illegality, impropriety, incorrect or unjustified order, which requires interference by this Court.

Para 39

Cases cited:

2002 (2) SCC 406 (Paul George Vs. State), (2008)5 SCC 113 Hem Chand Vs. State of Jharkhand, 2009 (1) CLJ (SC)21 Sanghi Brothers (Indore) Pvt.Ltd. V. Sanjay Choudhary; (1994) 2 SCC 420; AIR 1986 SCC (Cr) 212 (Pathuma Vs. Mahamad); 2002 SC(Cr)1448 (Bindeswari Prasad Singh Vs. State of Bihar); 2008 3(SCC) 542 Divine Retreat Centre Vs. State of Kerala and Others; 1977 SCC (Cr) 404 (State of Karnataka Vs. L. Muniswamy and Others); 2008 (2) E.C.R No.678 (Yogesh Vs. State of Maharashtra); AIR 1991 (SC) 534 (State of Sikkim Vs. Sonam Lama)

Mr. J.K.Bhattacharjee	.. for the petitioner.
Mr.Sudipto Moitra, Mr.Abhra Mukherjee	.. For the opposite parties.
Mr.Sasanka Ghosh	.. For the State.

Mrinal Kanti Sinha, J :

Heard learned Counsel appearing for the parties.

1. This revisional application has been directed against the order dated 26.06.2008 passed by learned Sessions Judge North 24-Parganas at Barasat in criminal revision No. 88 of 2007 (Saurav Roy and 4 Others Vs. The State of West Bengal with Smt. Brinda Roy, Nee Nag) arising out of Bidhannagar (East) case No. 9 of dated 23.01.2004 under Sections 498A/406/420, Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, G.R. Case No. 1055 of 2004, G.R. case No. 26 of 2004, and G.R. case No. 261 of 2004 (Bidhannagar).

2. It is the case of the petitioner, defacto-complainant, that on 23.01.2004 the Officer-in-charge, Bidhannagar (East) police station started police case No.9/2004 under Sections 498A/406 of the Indian Penal Code and Sections

3 and 4 of the Dowry Prohibition Act, 1961 against the opposite parties No. 2 to 6 to the effect that Smt. Brinda Roy (Nee Nag) submitted a written complaint before the Officer-in-charge of Barasat Police Station to the effect that she was married with Sri Saurav Roy as per the provision of Special Marriage Act, 1954 on 29.11.2002 and there was transaction of cash and kind to negotiate that marriage. The husband and parents-in-law of the petitioner Brinda Roy used to torture upon her at different times and used to create pressure upon her demanding further dowry and money, for which she left her husband's house on 9.9.2003, and since then she is staying with her father. The petitioner attempted to get her stridhan property including jewellery and furniture, but to no avail.

3. After investigation the Investigating Officer submitted charge-sheet against the opposite parties no. 1 to 5 under Sections 498A/420 of Indian Penal Code and 3 and 4 of the Dowry Prohibition Act, 1961, and also under Section 406 of the Indian Penal Code by way of supplementary charge-sheet after further investigation under Section 173(8) Cr.P.C. That case was numbered as 1055 of 2004 and re-numbered as G.R. 26 of 2004 and G.R. 261 of 2004 at Bidhanagar Judicial Magistrate's Court.

4. After hearing the parties and considering the materials on record on 26.02.2004 learned Additional Chief Judicial Magistrate framed charges against five accused persons under Sections 498A/420/406 of the Indian Penal Code, and Sections 3 and 4 of the Dowry Prohibition Act, 1961, in G.R. Case No. 26/2004, to which all the accused persons pleaded not guilty.

5. On 26.06.2008 learned Sessions Judge, Barasat, partly allowed the revisional application of the accused petitioners, whereby she ordered that the accused no. 4, 5 or the present opposite parties No. 5 and 6 be acquitted from the charges under Sections 498A/406 of the Indian Penal Code and Section 3,4 of the Dowry Prohibition Act, 1961. The subject matter of this

revisional application is the impugned order dated 26.06.2008 of the learned Sessions Judge, North 24 parganas.

6. It is to be considered now as to whether learned Sessions Judge, North 24 parganas was legal correct, proper and justified in passing the impugned order and whether there was any perversity or abuse of process of the Court thereby or not.

7. It has been alleged by the petitioner that the learned Sessions Judge, Barasat, was not justified in acquitting the present opposite parties No. 5 and 6 while exercising jurisdiction under Sections 397/398 read with Section 401 of the Code of Criminal Procedure, 1973. Learned Sessions Judge should have seen whether a prima facie case has been made out at this stage for framing charge against them and would not have made appreciation of evidence and the learned Sessions Judge, Barasat, has violated judicial discipline as mentioned in CRR No. 1995 of 2005 by passing the impugned order as this Hon'ble Court gave guidance to the Additional Chief Judicial Magistrate to conclude the trial in accordance with law. In CRR No. 1596 of 2004 also this Court passed necessary order. Learned Sessions Judge, Barasat, has improperly exercised her discretion, to which the Hon'ble Court can interfere for the ends of justice, and the learned Sessions Judge erred in fact and in law in passing the said order of acquittal of the present opposite parties No. 5 and 6. For that reason the petitioner of this revisional application prayed for setting aside of the impugned order and sending the case back to the Additional Chief Judicial Magistrate, Barasat, for trial framing charge against 5 accused persons.

8. As per submission of Mr. Jiban Kr. Bhattacharjee, learned Counsel for the petitioner, leave was granted for deleting the names of opposite party No. 2 Saurav Roy, opposite party No. 3 Ajit Ranjan Roy, and opposite party No. 4 Smt. Anita Roy from the Title Page of the revisional application, and

consequently opposite party No. 5 Saswati Sharma and opposite party No.6 Anurag Sharma were re-numbered as opposite parties No. 2 and 3.

9. Present opposite parties No. 1,2 and 3 are contesting the matter though they have not filed any affidavit-in-opposition.

10. Mr. Jiban Kr. Bhattacharjee, learned Counsel appearing for the petitioner has submitted that the learned Sessions Judge, Barasat, was not legal, correct and justified in passing order of acquittal or discharge of opposite party No.5 Saswati Sharma and opposite party NO. 6 Anurag Sharma as there is prima facie case and sufficient materials in the record to frame charge against them, and the learned Magistrate rightly framed charge against five accused persons including the opposite parties No.5, 6 or present opposite parties No. 2,3. Learned Counsel for the defacto-complainant also submitted that all the points have been decided by the Hon'ble Justice D.P Sengupta and Hon'ble Justice S.P. Talukar, and he has placed xerox copy of the order sheet for perusal of the Court. In support of his various submissions learned Counsel for the petitioner has relied upon the decisions reported in 2002 (2) SCC 406, (2008)5 SCC 113, 2009 (1) CLJ (SC)21 and (1994) 2 SCC 420.

11. Mr. Sudipto Moitra, learned Counsel for the opposite parties No. 2 and 3 has argued that the impugned order passed by the learned Sessions Judge, Barasat, in criminal revision No. 88/2007 suffers from no illegality or perversity nor there was non-application of mind or non-consideration of materials on record while passing the impugned order or exercising revisional jurisdiction, and as the learned Sessions Judge found no material for framing charge against the opposite party Nos. 5 and 6, who have subsequently been re-numbered as opposite party Nos. 2 and 3, so she has ordered their discharge from the said case, and though learned Sessions

Judge, Barasat, has passed that order of acquittal, yet practically that is an order of discharge as because at the stage of framing charge an accused can be discharged according to law if required and cannot be acquitted before consideration of evidence. But the learned Sessions Judge has rightly and legally passed said revisional order discharging the accused opposite party Nos. 5 and 6, who have been re-numbered 2, 3 subsequently. In support of his various arguments learned Counsel for the opposite party Nos. 2 and 3 has relied upon the decision reported in AIR 1986 SCC (Cr) 212, 2002 SC(Cr)1448 paras 8,10,11, 2008 3(SCC) 542 at para 27, 1977 SCC (Cr) 404 paras 9 and 10, and 2008 (2) E.C.R No.678 at paras 14 and 15, and AIR 1991 (SC) 534.

12. Mr. Sasanka Ghosh, learned Counsel for the State/ opposite party No.1 has submitted that in view of the materials of the C.D. charge should be framed against the present opposite party Nos. 2 and 3 along with other accused persons, though learned Public Prosecutor-in-charge did not submit anything before the learned Sessions Judge in this regard.

13. It appears that on the basis of a written complaint of the petitioner Smt. Brinda Roy (Nee Nag) dated 23.01.2004 G.R. Case No. 26/2004 was initiated against 5 accused persons. It was alleged in the said written complaint that the accused persons being husband, parents-in-law, sister-in-law of the petitioner and her husband used to torture her and demanded money and other articles for which the petitioner was compelled to leave her matrimonial home at Saltlake on 9.9.2003 and she sent her representative to her matrimonial home to collect her articles, when the accused persons refused to hand over the articles to him. The matter was investigated by police and charge-sheet under Sections 498A/420 of the Indian Penal Code and 3,4 of the Dowry Prohibition Act was submitted against 5 accused persons. Thereafter a supplementary charge-sheet was filed under Section

498A/406 of the Indian Penal Code and cognizance was taken to that effect by the learned SDJM, Bidhannagar.

14. Being aggrieved by and dissatisfied with the order of the learned SDJM, Bidhannagar, dated 26.02.2007 in G.R. Case No. 26/2004 the accused persons preferred a revisional application before the learned Sessions Judge, North 24-parganas. Then 5 accused/petitioners filed criminal revision no. 88/2007 against aforesaid order Learned SDJM, Bidhannagar. Then learned Sessions Judge, North 24-parganas at Barasat, delivered her judgement in criminal revision No. 88/2007 by which learned Sessions Judge, North 24-parganas, allowed criminal revision No. 88/2007 in part on contest and acquitted accused Nos. 4,5 namely Saswati Sharma, Anurag Sharma from charge under sections 498A/ 406 of the I.P.C. and 3,4 of the Dowry Prohibition Act while directing the learned ACJM, Bidhannagar, to complete the trial against the accused Nos. 2,3,4 Saurav Roy, Ajit Ranjan Roy, Anima Roy, within one month from the receipt of the order.

15. Apparently by the impugned order learned Sessions Judge, North 24 parganas in fact discharged the accused Nos. 4 and 5 namely Saswati Sharma, Anurag Sharma though she passed an order of their acquittal, as she has stated in body of her judgement at page 5 that :-

“I do not find any material in the C.D. or supplementary charge-sheet for framing charge under Sections 498A/406 of the I.P.C. and Section 3 and 4 of the Dowry Prohibition Act against accused Nos. 4 and 5 and hence they should be discharged from this case.”

16. So in effect the said order of acquittal appears to be an order of discharge of accused Nos. 4 and 5 namely Saswati Sharma and Anurag Sharma. In fact acquittal order cannot be passed before taking evidence, and

at the time of framing charge discharge order maybe passed against an accused in case no material is found against him for framing charge.

17. Be that as it may, the fact remains that at the time of hearing of this revisional application learned Counsel for the opposite party Nos. 2 to 6 submitted that initially charge was framed against 5 accused persons, but subsequently learned Sessions Judge, North 24-parganas, acquitted accused Nos. 4 and 5, namely Saswati Sharma and Anurag Sharma respectively, vide order dated 26 January, 2008, while giving direction to complete trial of accused persons No. 2,3 namely Saurav Roy, Anima Roy and Ajit Ranjan Roy, being the opposite party Nos. 2, 4, and 3 of this revisional application. As such there was no need to make the opposite party Nos. 2, 3 and 4 party in this revisional application.

18. In pursuance of that submission of the learned Counsel for the opposite party Nos. 2 to 6, learned Counsel for the petitioner prayed for deleting the names of the said opposite party Nos. 2,3 and 4 of this revisional application on that ground, to which no objection was raised by the opposite parties. Accordingly leave was granted to the learned Counsel for the petitioner to delete the names of the opposite party No. 2 Saurav Roy, opposite party No. 3 Ajit Ranjan Roy, opposite party No. 4 Anima Roy from the Title Page of the revisional application, and consequently opposite party No. 5 Saswati Sharma and opposite party No. 6 Anurag Sharma were re-numbered as opposite party Nos. 2 and 3 vide order dated 27.07. 2010 passed in CRR No. 2810 of 2010.

19. It has already been pointed that the learned Sessions Judge, North 24 parganas acquitted or discharged the accused Nos. 4, 5 namely Saswati Sharma and Anurag Sharma, who have been re-numbered as opposite parties No. 2, 3 vide order dated 27.07.2010, as she did not find any material in the C.D. or supplementary charge-sheet for framing charge

against them under Sections 498A/406 and Section 3 , 4 of the Dowry Prohibition Act.

20. It is an established principle of law that at the time of framing or consideration of charge against the accused it is to be considered as to whether there is prima facie case for framing charge against the said accused or not. The test to determine the prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down any rule of universal application and if two views are possible, and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused and at this stage he is not to see as to whether the trial will end in conviction or not, and it has been so held by the Hon'ble Apex Court through the decision reported in 2008(2) E.Cr.N. at page 678 (Yogesh Vs. State of Maharashtra).

21. Thus, it appears that regarding framing of charge against the present opposite parties No. 2, 3 and 4 husband and parents-in-law of the petitioner, there is no dispute between the parties, but the question is whether discharge of the present opposite parties No. 5, 6, who have been re-numbered as petitioners No. 2, 3 in the instant revisional application, was proper, correct and justified, and whether charge should be framed against them also for facing the trial, and whether those questions can be considered in this revisional application under Section 401 and 482 of the Cr.P.C., 1973 or not, require consideration.

22. As per the provisions of Section 401 of the Code of Criminal Procedure the High Court exercises the power of revision, and Section 482 of the Code Criminal Procedure saves the inherent power of the High Court. Section 482 of the Code of Criminal Procedure does not confer any new power on the High Court but only saves the inherent power of the High Court which the

Court possessed before the enactment of the new Code of Criminal Procedure. It has been held by the Hon'ble Apex Court through the decision reported in 2008(3) SCC 542 at 557 para 27 in the case of Divine Retreat Centre Vs. State of Kerala and Others

that :-

“ In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the Section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.”

23. We may now consider the instant matter in view of the aforesaid finding of the Hon'ble Supreme Court, as apparently the impugned order has been passed by the learned Sessions Judge, North 24 parganas, as per the provision of the Code of Criminal Procedure while delivering the judgement in the revisional application of the petitioner.

24. The learned Sessions Judge, North 24 parganas was well within her right to pass the impugned order in her revisional jurisdiction. It has specifically been noted in the impugned order of the learned Sessions Judge concerned that she has carefully gone through the LCR, CD, supplementary charge-sheet filed against the accused persons, and she did not find any material in the CD or supplementary charge-sheet for framing charge under Sections 498A/406 I.P.C. and 3 and 4 of the Dowry Prohibition Act against the accused Nos. 4, 5 or present opposite parties no. 5, 6, re-numbered as

petitioners No. 2 , 3 in this case, and hence they should be discharged from the case.

25. It also appears that the learned Sessions Judge has observed that :-

..... “Learned Counsel for the accused persons argued that there is no iota of prima facie evidence against the accused Nos. 4 and 5 in misappropriating any stridhan. They are the daughter and son-in-law of the accused Nos. 2 and 3 and question of misappropriating the stridhan properties does not arise”.

26. So as per the observation of the learned Sessions Judge, North 24-parganas, there was no iota of prima facie evidence against the accused Nos. 4 and 5 in the alleged misappropriation of the ‘stridhan’ of the petitioner or defacto-complainant, and she found no material in the C.D. or supplementary charge-sheet for framing under Sections 498A/406 I.P.C. and 3 and 4 of the Dowry Prohibition Act against the accused Nos. 4 and 5, present petitioners No. 2 and 3, and all those points have already been decided by the Hon’ble Justice S.P. Talukdar, and though the learned Counsel for the State has pointed out in the revisional application before this Court that there are materials against accused Nos.4 , 5 or the present petitioners Nos. 2 , 3 for framing charge against them, yet the learned P.P-in-charge submitted nothing before the learned Sessions Judge, North 24-parganas. As per observation of the learned Sessions Judge, North 24-parganas, in spite of going through LCR, CD and judgements of the Hon’ble Court, learned Sessions Judge, North 24-parganas, found no material for framing charge against the accused Nos. 4, 5 or the present opposite parties No. 2 and 3. It appears that it has been mentioned in the impugned order that by order passed in CRR No. 1596 of 2004 on 7.9.2004 Hon’ble Justice D.P. Sengupta of this Hon’ble Court set aside the order dated 25.03.2004 passed by the learned Magistrate taking cognizance of the offences under Sections

498A/420 of the Indian Penal Code and Sections 3,4 of Dowry Prohibition Act. It would not also be out of place to mention here that the learned Sessions Judge, North 24-parganas, has referred to an observation of Hon'ble Justice S.P.Talukdar of this Hon'ble Court made in CRR No. 1995 of 2005 that the stridhan properties of opposite party No.1 having been returned earlier there could be no justification for introducing Section 406 of the Indian Penal Code. It also appears therefrom that a G.D. was lodged at Gariahat Police Station by the petitioner Brinda Roy on 9.12.2003 for return of her 'stridhan', which was returned on 10.12.2003 and due receipt of that was granted by Shri Motilal Nag, father of Brinda Roy (Nee Nag), and by that CRR quashing of proceeding was prayed for. From that point of view it cannot be said that the impugned order of the learned Sessions Judge, North 24 parganas was illegal, in-correct, improper or unjustified.

27. While perusing the materials on record including the CD it appears to this Court also that the learned Sessions Judge was right in her finding that there is no sufficient material against the accused Nos. 4,5, or present opposite parties no. 2 and 3, to frame charge against them under Sections 498A/ 406/420 I.P.C. and 3 , 4 of the Dowry prohibition Act, or in other words there is no prima facie case against the present opposite parties no. 2,3 to frame charge against them under the aforesaid sections. In fact it would be abuse of process of the Court to frame charge against the accused Nos. 4,5 or present opposite parties no. 2,3 under the aforesaid Sections, as there is no specific allegation against the accused Nos.4, 5, or present opposite parties no. 2,3, in their names in the present revisional application or in the C.D. So, the learned Sessions Judge, North 24 parganas, was not wrong, illegal, improper or unjustified in her finding that there is no sufficient material against accused Nos. 4,5 or present opposite parties no. 2,3 to frame charge against them under the aforesaid sections. So in order to prevent the abuse of process of the Court and otherwise securing ends of justice no

charge should be framed against the accused persons 4, 5 or present opposite parties no. 2,3, under the aforesaid Sections.

28. It has been held by the decision reported in 2002 SCC (Cri) 1448 (Bindeswari Prasad Singh Vs. State of Bihar) that in absence of manifest illegality, perversity, miscarriage of justice High Court would not be justified in interfering with the finding of acquittal of the accused. In the instant matter there is no such manifest illegality perversity or case of miscarriage of justice so that this Court would be required to interfere in its revisional or inherent jurisdiction.

29. It has been decided by the decision reported in 1986 SCC (Cri) 212 (Pathuma Vs. Mahamad) that Magistrate's finding of fact under Section 125 based on evidence is not open to interference by the High Court in exercise of its revisional jurisdiction under Section 401. In the instant case the impugned order has been passed at the time of consideration of charge before taking of evidence.

30. In the decision reported in 1977 SCC (Cri) 404 (State of Karnataka Vs. L. Muniswamy and Others) it has been observed that the High Court in exercise of its inherent power quashed proceeding pending before the Sessions Judge on the ground of insufficiency of evidence under Section 482 of the Criminal Procedure Code, 1973. So, when allowing the proceeding to continue would be abuse of the process of the Court and the ends of justice require that the proceedings ought to be quashed, then only inherent power of the Court may be exercised.

31. In the decision reported in AIR 1991 SCC 534 (State of Sikkin Vs. Sonam Lama) it has been decided that when the statement of witness under Section 161 Cr.P.C. and the record does not show any material justifying implication of the accused persons in the alleged crime, then no prima facie

case is made out against them, and prosecution against the accused in the case is abuse of the process of the Court and the charge against them is liable to be quashed.

32. In the decision reported in 2009 (1) C.L.J. (S.C.) in the case of Sanghi Brothers (Indore) Pvt.Ltd. V. Sanjay Choudhary it has been decided by the Hon'ble Apex Court that at the stage of framing charge what the Court is required to consider is the question of prima facie evidence.

33. In the decision reported in (2008) 5 SCC 113 in the case of Hem Chand Vs. State of Jharkhand, Hon'ble Apex Court has decided that at the stage of framing charge the Court would not weigh the evidence and it would only see whether a prima facie case has been made out and at that stage the Court would not delve deep into the matter for the purpose of appreciation of evidence.

34. Learned Counsel for the petitioner has relied upon a decision reported in (2002) 2 SCC 406 (Paul George Vs. State) whereby it has been decided that speaking order giving reasons with indication of application of mind to the facts or pleas raised before the Court is necessary, and merely saying that no illegality, impropriety or jurisdictional error was found without even a whisper in the merit of the matter or nature of the pleas raised is not good enough.

35. In the instant case it appears that the learned Sessions Judge, North 24 parganas, has stated in her order that she has carefully gone through the LCR, CD and supplementary charge-sheet filed by the prosecution against the accused persons and she found from the CD that the same contain accusation against the husband, father and mother of the accused Saurav Roy, though not specifically, but she did not find any material in the CD or supplementary charge-sheet for framing charge against the accused Nos. 4,5

or present opposite parties Nos. 2,3 under Sections 498A/406 I.P.C. and 3, 4, of the Dowry Prohibition Act. Apparently the learned Sessions Judge, North 24-parganas, has not passed any bald order merely saying that no illegality, impropriety, jurisdictional error was found in the order under revision before her, and she also considered the materials in the LCR, CD as well as supplementary charge-sheet, so it cannot be said that there was no speaking order giving reasons or there was no application of her mind to the facts and pleas raised before her.

36. It has also been observed by the Hon'ble Apex Court in the decision reported in 1994(2) SCC 420 in para 15 as relied upon by the learned Counsel for the petitioner that :-

“Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it.”. There is always an Appellate Court to correct errors. One should keep in mind. The principle behind Section 465 Cr.P.C. Any and every irregularity or infraction of a procedural provision cannot constitute a ground for interference by Superior Court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. *“Such frequent interference by superior courts at that interlocutory stages tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system”*.

37. It appears that in the instant case learned Sessions Judge, North 24-parganas has not committed any such illegality, impropriety, incorrect or unjustified order, or abuse of the process of Court which requires interference by this Court.

38. Though the learned Counsel for the State has argued before this Court that charge should also be framed against the accused Nos. 4 and 5, or present petitioners 2 and 3, yet it appears from the impugned order that the learned Public Prosecutor-in-charge did not submit anything before the learned Sessions Judge, North 24-parganas, in that regard.

39. Having regard to the submission of the learned Counsels for the parties, the above noted decisions of the Hon'ble Apex Court, LCR, CD other materials on record and the circumstances it appears that the impugned order passed by the learned Sessions Judge, North 24-parganas, was neither perverse, illegal nor there was any non-application of mind and non-consideration of materials on record, nor there was any abuse of process of Court. As such learned Sessions Judge, North 24-parganas, has not committed any such illegality, impropriety, incorrect or unjustified order, which requires interference by this Court.

40. Accordingly the said order stands. The revisional application bearing CRR No. 2810 of 2008 stands dismissed. Trial of the G.R. case No. 1055 of 2004, G.R. case No. 26 of 2004, G.R. case No. 261 of 2004 (Bidhannagar) be expedited according to law.

41. Let LCR along with a copy of this judgement be sent to the learned Sessions Judge, North 24-parganas, Barasat, and to the learned ACJM, Bidhannagar as early as possible for information and compliance

42. Urgent xerox certified copy of this judgement, if applied for, be given to the parties expeditiously.

(Mrinal Kanti Sinha, J.)

