

8 SCOB [2016] HCD 19**HIGH COURT DIVISION
(Criminal Revisional Jurisdiction)**

Criminal Revision No. 904 of 2012

Mr. Syed Amzad Hossain, Advocate

...For the opposite party No.2

Abdul Kader Patwary and others

...petitioners

Mr. Zahirul Hoque Zahir, D.A.A. with

Versus

Mr. Md. Atiqul Haque (Salim), A. A.G.
and**The State and another**

...opposite parties

Mr. Nizamul Hoque Nizam, A.A.G.

...For the opposite party No.1

Mr. Md. Shameem Sarder, Advocate

...For the petitioners

Heard on: 17.08.2015, 18.08.2015

Judgment on: 18.08.2015

Present:**Mr. Justice Shahidul Islam****And****Mr. Justice K.M. Kamrul Kader****Code of Criminal Procedure, 1898****Section 265D****Framing of Charge:**

It has now been settled by our apex Court that, at the time of framing charge the Court concern is required to consider only the materials of the prosecution but not the materials submitted by the defence. In the instant case, it appears that, the learned Additional Sessions Judge has not committed any illegality in framing charge against all the accused persons.

... (Para 14)

Judgment**Shahidul Islam, J:**

1. The Rule was issued calling upon the opposite party to show cause as to why the order dated 29.02.2012 passed by the learned Additional Sessions Judge, Chandpur in Sessions Case No. 152 of 2010 arising out of Foridgonj Police Station Case No. 15 dated 27.03.2010 corresponding to G.R. No. 61 of 2010 under sections 147/ 447/ 448/ 307/ 323/ 324/ 302/ 379/ 380/34 should not be set aside and or pass such other or further order or orders passed as to this Court may seem fit and proper.

2. This Court stayed all further proceedings of the Sessions Case for a period of 3(three) months and that was being extended from time to time and the last extension was made dated 29.4.2014 till disposal of the Rule.

3. The informant initially was not made a party in the Rule and thereafter the informant came up with an application for a being added as opposite party no. 2 and that application was allowed by an order dated 12.2.2014.

4. Facts relevant for disposal of the Rule are that, the opposite party No.2 lodged a first information report with the Foridgonj Police Station on 27.03.2010 against the petitioners of

the Rule and others contending interalia that, the informant is the owner of a piece of land (place of occurrence) by away of inheritance. The informant and the witness No. 1 have been living in the said land for a long time by constructing house. The accused persons named in the F.I.R. were trying to dispossess them from the said land since a for long time but failed. A salish was held on the date of occurrence and the local elite persons took an attempt to make a peaceful compromise between the accuseds and the informant parties. At the time of holding salish, the accused persons, all on sudden, being armed with deadly weapons made on attacked upon the informant and his relations with lathal weapon. The witnesses nos. 1-8 as shown in the F.I.R. tried to restrain them but the accused persons assaulted the informant and his relations severally, broken down their houses and took away valuable articles of the house (worth of) valued at TK. 4,00000 (four lacs). It is stated in the F.I.R. that, amongst the accused persons, accused Mohin with a view to kill the victim Anzoman Begum inflicted a "Chheni" hit on her head and the victim sustained a grievous cut injury. She was sent to Dhaka for treatment. The accused no. 3 with a view to kill Jolekha inflicted a "Dao" hit on the head of Jolekha and she also sustained grievous cut injuries. Accused Nos. 2-9 dealt lathi hits on the body of witness No. 5 and caused lacerated injury and other accused persons also took part in the occurrence. The victims were taken to Faridgonj Health Complex but they were prevented. Thereafter they were sent to Chandpur Sadar Hospital and was admitted. But the Chandpur Medical Authority did not issue any certificate to the injured persons. Lastly the victim Anzuman Begum was admitted to Dhaka Medical College Hospital wherein she ultimately succumbed to her injuries.

5. The case was duly investigated by the Investigating Officer who submitted charge sheet against as many as 50 accused persons under sections 147/ 447/ 448/ 307/ 323/ 324/ 302/ 379/ 380/ 114/ 34 of the Penal Code.

6. Thereafter the case record was transmitted before the learned Sessions Judge, Chandpur and was registered as being Sessions Case No. 152 of 2011. Ultimately the case was transferred to the Court of learned Additional Sessions Judge, Chandpur for trial.

7. The learned Additional Sessions Judge took up hearing for framing of charge on 29.2.2012 and accused persons submitted an application under section 265C of the Code of Criminal Procedure for getting them discharged from the allegations made out in the F.I.R. The learned Additional Sessions Judge after hearing the parties framed charges against the accused petitioners by the impugned order dated 29.2.2012 under sections 147/447/ 448/ 307/ 323/ 324/ 302/ 379/ 380/ 34 of the Penal Code.

8. Being aggrieved by the said judgment and order the petitioners have obtained the instant Rule.

9. Mr. Md. Shameem Sarder, the learned Advocate appeared for the accused petitioners, Mr. Syed Amzad Hossain, the learned Advocate appeared for the informant opposite party No.2 and Mr. Zahirul Hoque Zahir, the learned Deputy Attorney General appeared for the State.

10. Mr. Md. Shameem Sarder, the learned Advocate on appearing for the petitioners took us through the F.I.R., charge sheet, Postmortem report made on the dead body of the victim, 161 statements made by the witnesses as well as 164 statements made by the witnesses and submitted that, the witnesses implicated specifically as to who had taken what part in the commission of offence and who had inflicted what sort of fatal blow individually on the victim. He further submitted that, there is averments made in the F.I.R that the accused

persons in furtherance of their common intention made an attack upon the victim to kill her. He further submitted that, the learned Additional Sessions Judge failed to consider the F.I.R. statement, the statement recorded under section 161 of the Code of Criminal Procedure by the Investigating Officer as well as the statements made under section 164 of the Code of Criminal Procedure of the witnesses. He submitted that, the accused persons had no intention to kill the victim and as such framing of charge under section 302 of the Penal Code was illegal. With this submission he prayed for an interference by this Court as against the order.

11. Mr. Syed Amzad Hossain, the learned Advocate appeared for the informant opposite party No. 2 who on the other hand submitted that, the F.I.R. statements disclosed specifically that, the accused persons with a view to kill the victim and others made sudden attack upon them being armed with lethal weapons while they were engaged in a Salish over the dispute of the place of occurrence and the accused persons had beaten up the informant party mercilessly and the informant party being female persons had no scope to save them from merciless beating of the accused persons. He further submitted that, all the injured persons initially were taken to Faridgonj Health Complex but they were prevented by the accused persons and thereafter they were sent to Chandpur Sader Hospital and were admitted but no medical certificates were issued in their favour ultimately the victim was taken to the Dhaka Medical College Hospital wherein she succumbed to her injuries. He submitted that, the F.I.R. statements itself are enough to frame charge against all the accused persons under sections 302/34 of the Penal Code along with other sections, he prayed for discharged the Rule.

12. Mr. Zahirul Hoque Zahir, the learned Deputy Attorney General appeared for the state and adopted the submission made by Mr. Syed Amzed Hossain and prayed for discharge of the Rule.

13. We have considered the submissions made by the learned Advocate for the petitioners as well as the informant opposite parties.

14. We have gone through the statements made in the F.I.R. as well as statements recorded under sections 161 and 164 of the Code of Criminal Procedure. It appears that, the occurrence took place on 10.03.2010 at about 10:00 A.M. and the F.I.R. was lodged on 27.03.2010 and the F.I.R. itself discloses specifically the part played by the accused persons in-furtherance of their common intention to kill the victim and others. The victim as well as other injured were admitted to Chandpur Sader Hospital and thereafter the victim was shifted to the Dhaka Medical College Hospital wherein she succumbed to her injuries. The F.I.R. discloses specific allegation against all the accused persons and the police in course of investigation found prima-facie case against all the accused persons and as such submitted charge sheet. The learned Sessions Judge at the time framing charge has taken into consideration the case as made out in the F.I.R., charge sheet, inquest report, postmortem report, as well as statements made under sections 161 and 164 of the witnesses. It appears that, the learned Additional Sessions Judge at the time framing charge has applied his judicial mind and passed a very sound and lawful order in framing charge against all the accused persons. It appears that, the impugned order is not only a speaking order but in framing charge he has come to his own judicial opinion by writing a very lawful order in support of framing charge. It has now been settled by our apex Court that, at the time of framing charge the Court concern is required to consider only the materials of the prosecution but not the materials submitted by the defence. In the instant case, it appears that, the learned Additional Sessions Judge has not committed any illegality in framing charge against all the accused persons. Accordingly, we do not find any merit in the Rule.

15. In the result, the Rule is discharged. Stay order passed in connection with the Rule stands vacated. The learned Additional Sessions Judge, Chandpur is directed to conclude trial of the case as early as possible

16. Send a copy of the judgment and order to the concern Court below at once.