

Order no 20, dated 27.02.2018

Today is the date fixed for ER of WA against accused Santo Mondal, appearance of rest accused, the appearance of ASI Manik Halder of Jalangi PS, Ld. Advocate Rafikul Islam, Tunku Abdur Rahaman and report from the IO of this case, Ex- SI Tarun Kumar Roy.

Accused Dhonopati Mondal and Dhirendranath Mondal are present and files hazira.

One absent petition is filed on behalf of accused Bhupati Mondal and Sanat Mondal on the ground stated therein.

The same is considered and allowed.

IO of his case, Ex-SI Tarun Kumar Roy is present and he files his report.

Manik Halder, ASI of Police, Jalangi PS is absent and it is reported that he has not yet joined PS and he is overstaying leave.

In this case charge sheet has been submitted against 5 accused persons namely –

- 1) Dharendra Nath Mondal, s/o Shirish Mondal
- 2) Bhupati Mondal, s/o Dharendra Nath Mondal
- 3) **Santo Mondal, s/o Dharendra Nath Mondal** and
- 4) Sanat Mondal, s/o Dharendra Nath Mondal vide CS No. 1267/12, dated 28.12.2012 u/s 447/323/376/511/506 IPC.

During the Course of hearing before the Court an anomaly has been cropped up as to whether Santo Mondal is a male or female accused, though indicated in the charge sheet as male accused being S/o Dharendra Nath Mondal (as indicated in bold and underline).

Upon perusal of the case record it is revealed that one Santo Mondal made an application along with others u/s 438 Cr.P.C for anticipatory bail which was allowed vide order No. 3, dated 03.12.2012 passed in Criminal Misc. Case No. 5285/12 and thereafter said Santo Mondal surrendered before the Court of Ld. Chief Judicial Magistrate on 10.12.2012 along with others. It further appears from the Lower Court Record that Ld. Advocate Rafikul Islam accepted Vokatnama on behalf of accused Santo Mondal on 10.12.2012 (i.e. the date of surrender) and on perusal of the Vokatnama, it is revealed that against the name of Santo Mondal 'S/o' has been overwritten as 'D/o'.

On the date of commitment i.e. on 17.09.2013 all the 5 accused persons on CB were present before the Court of Ld. CJM, Murshidabad and the case was committed to this Court fixing 30.05.2014 for appearance of the accused persons.

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Due to non-taking of proper steps WA was issued against all the accused persons on 04.03.2016 including accused Santo Mondal. Thereafter, one Santo Mondal @ Suprita Mondal, W/o Dhirhan Mondal surrendered before the Court on 19.03.2016, but she was released at once as identification of said Santo Mondal was not satisfactory. After the commitment of the case record this accused did not appear before this Court.

It appears from the report of Manik Halder, ASI of Police that he could not submit execution report in respect of accused Santo Mondal as it is not reflected in the charge sheet whether Santo Mondal is male or female.

Ld. Advocate Mirajul Islam has submitted an application with the contention that accused Santo Mondal is a female accused and she is the daughter of Dhirendra Nath Mondal and accordingly the accused should be treated as female accused and in support of his contention he has filed documents (let it be kept with the record).

IO of this case, Ex-SI Tarun Kumar Roy submits a report stating that out of bona fide mistake **Santo Mondal has been indicated as S/O Dhirendra Nath Mondal instead of Santo Mondal D/o Dhirendra Nath Mondal.**

Ld. Advocate Md. Tunku Abdur Rahaman who accepted Vokatnama of the accused persons on 06.01.2015 also submits that Santo Mondal is a female accused, but out of inadvertence she has been indicated as a male accused being S/o Dhirendra Nath Mondal which should in actuality be D/o Dhirendra Nath Mondal.

In view of the above perspective of facts it has fallen before this Court that an anomaly has crept in relating to the identification of charge sheeted accused Santo Mondal, to be precise, as to whether Santo Mondal is a male accused being S/o Dhirendra Nath Mondal or is a female accused being D/o Dhirendra Nath Mondal.

To my mind a thorough enquiry is required to ascertain and decipher the identity of the accused Santo Mondal. The Learned Chief Judicial Magistrate, Murshidabad is directed to take necessary steps in this regard.

Let a copy of this Order along with photocopies of documents and Lower Court Record be sent down to Ld. Chief Judicial Magistrate for taking necessary action and report compliance before this Court by 27.04.2018.

Fix 15.03.2018 for appearance of the accused persons before the Court of Ld. Chief Judicial Magistrate, Murshidabad.

Inform.

Dictated and corrected by me

Session Judge, Msd,

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