

**In the Court of the Additional District & Sessions Judge, 2nd Court,
Bongaon, Dist.- North 24 Parganas**

Before

Shri Pradip Kumar Adhikary, WBJS,
J O Code (UID No.) - WB916,
Additional District & Sessions Judge, 2nd Court,
Bongaon, Dist.- North 24 Parganas.

CNR No.- WBNP 0600 2101 2022
SC No.- 314 of 2022
ST No.- 05 (07) of 2024
arising out of
Bongaon PS Case No.- 11 dated 18/01/1998

**Charge framed under sections 326/307 of the Indian Penal Code, 1860 and sections 25 /
27 Arms Act, 1959**

State

represented by Ld. PP-in-Charge Shri Arnab Chatterjee
v.

Rafik Chitrakar

represented by Ld. Advocate Shri Ranjit Pramanick and Shri Pradip Kumar Chatterjee

Order No.- 12
25/02/2025

Today is fixed for evidence on behalf of the prosecution.

The sole accused on Court bail is present by filing hazira.

The Investigating Officer is absent without any steps

The Ld. PP-in-Charge is present with CSW No.- 05 Ajijul Chitrakar who is examined as P.W.- 05, cross-examined in full and discharged.

At this stage the Ld. PP-in-Charge has filed an application under section 311 CrPC / 348 BNSS stating that names of seizure witnesses Sanjay Halder and Ram Mohan Nath have not been mentioned in the list of witnesses of charge-sheet who are necessary witnesses and they are required to be examined and as such he has prayed for passing necessary order for issuing summons upon those two seizure witnesses.

Heard.

Re-iterating the grounds as mentioned in the petition the Ld. PP-in-Charge has pointed out that this is a case punishable under sections 25/27 of the Arms Act along with sections 326/307 IPC and there is a seizure of pistol and those two persons are seizure witnesses. In order to prove that seizure evidence of those two witnesses are very much necessary. Pointing out the perfunctory investigation conducted by the IO, the Ld. PP-in-Charge has prayed issuance of summons upon those two witnesses.

Raising no objection against the instant petition the Ld. Advocate has expressed his concern about the poor investigation conducted by the concerned IO and has prayed for passing necessary order.

Considered the materials on record.

This is a case punishable under sections 326/307 IPC and sections 25/27 of the Arms Act. The concerned Investigating Officer seized one automatic pistol made in Italy fitted with empty magazine engraved as "No. 7 mm" and one green colour plastic carry bag under seizure list mentioning Sanjay Halder and Ram Mohan Nath as seizure witnesses. There is

no iota of doubt that the seizure witnesses are most vital and pivotal witnesses of the case and their evidence is essential for the just decision of the case. But surprisingly, the Investigating Officer has not cited those two persons in whose presence seizure was claimed to be made as witnesses in the charge-sheet.

Once a case has been registered, it must be followed by investigation. Investigation must result in filing final report or charge sheet.

In terms of observations of ***H. N. Rishbud v the State Of Delhi : 1955 AIR 196 : 1955 SCR (1) 1150*** and ***M.C. Mehta v Union Of India : (2007) 1 SCC 110*** it is crystal clear that after completion of investigation by the Investigating Officer a report has to be submitted to the Magistrate. The Investigating Officer may be an officer subordinate to the Officer-in-Charge of the police station, who has been authorised to hold investigation. But, the final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is of the Officer-in-Charge of the police station and this function cannot be delegated.

In ***Sharif Ahmed v. State of Uttar Pradesh : 2024 INSC 363*** the Hon'ble Apex Court has been pleased to lay down that

The charge sheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a charge sheet should prima facie show that an offence is established if the material and evidence is proven. The charge sheet is complete where a case is not exclusively dependent on further evidence. The trial can proceed on the basis of evidence and material placed on record with the charge sheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges.

According to the **Police Regulations of Bengal, 1943** when an officer-in-charge of a police station on completion of an investigation finds the charge proved and proposes to proceed against any person, he shall at one submit charge-sheet in B P Form No.- 39 which is the report prescribed under section 173 of the CrPC.

The **Police Regulations of Bengal, 1943** further mandates that a Circle Inspector shall supervise every case within his circle; and he shall visit the place of occurrence and test the evidence in every such case that is of important.

The **Police Regulations of Bengal, 1943** also provides that a Superintendent shall supervise the investigation of important special report cases and of all cases in which the conduct of subordinate police officers appears unsatisfactory. If, for special reasons, he is unable to supervise the investigation of any such case, he may depute an Assistant or Deputy Superintendent to do so.

It is categorically mandated in the **Police Regulations of Bengal, 1943** that a Superintendent is expected to take a share in the actual investigation of important cases.

It is quite likely that mistakes or omissions may occur for which the supervising officer should point out to the IO about such omissions or mistakes.

The Court would like to place the matter to the Superintendent of Police, Bongaon PD with a direction to call for an explanation from the erring police officer(s) and take necessary action and the Court shall be informed of the action so taken by him by the next date positively.

There is no explanation either in the charge-sheet or in the case diary either from the end of the Investigating Officer or from the side of the Officer-in-Charge of the concerned PS and the concerned Sub-Divisional Police Officer for not citing those vital witnesses (seizure witnesses) as witnesses in the charge-sheet which is also required to inquired into.

Hence, the Superintendent of Police, Bongaon PD is directed to inquire into the lacunae as stated above and take necessary action and the Court shall be informed of the action so taken by him.

The Court is constrained to point out that not only this charge-sheet but many other charge-sheets were filed without complying the provisions of law. There are many lacunae,

irregularities, illegalities etc. viz. non-citation of de-fact complainant, victim / injured, doctor, seizure witness, RI, IO etc. as witnesses, citation of one seizure witness out of two seizure witnesses without explanation, no noting of previous convictions with case references and antecedents of the accused, submission of charge-sheet showing the accused as absconder with complying the relevant provisions of the law, non-submission of list of property of absconder, delay in submission of charge, discharge of accused persons illegally and unlawfully although their names have been arrayed in the material evidence collected by IO, non-mentioning of e-mail i.d./mobile nos. and Aadhaar card particulars of witnesses, non-intimation to the heads of the offices where such public servants witnesses are posted that the latter have been cited as a witnesses in the case, non-intimation to the accused well in advance about filing of charge-sheet, non-intimation to the de-facto complainant in writing about the result of the investigation of the case, absence of memo of evidence in the case diary, etc. which is required to be looked into by the Superintendent of Police of this Police District for the ends of justice. (Some of the references are **CNR No.- WBNP 0600 1459 2020 / SC No.- 73 of 2020 / ST No.- 08 (04) of 2022, CNR No.- WBNP 0600 0611 2022 / SC No.- 62 of 2022 / ST No.- 05 (03) of 2024, CNR No.- WBNP 0600 0854 2024 / SC No.- 182 of 2024 / ST No.- 01 (07) of 2024, CNR No.- WBNP 0600 2424 2024 / SC No.- 43 of 2025, CNR No.- WBNP 0600 1972 2024 / SC No.- 277 of 2024 and CNR NO.- WBNP 0600 0260 2025 / CMC No.- 73 of 2025).**

The Superintendent of Police, Bongaon PD is directed to take appropriate effective measures for proper investigation so that justice may not become casualty.

In **Sharif Ahmed v. State of Uttar Pradesh : 2024 INSC 363** the Hon'ble Apex Court has further been pleased to lay down that

Therefore, the investigating officer must make clear and complete entries of all columns in the charge sheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the charge sheet, for each of the accused persons.

The Superintendent of Police, Bongaon PD is directed to ensure that the solemn mandates of the Hon'ble Apex as heralded in **Sharif Ahmed v. State of Uttar Pradesh : 2024 INSC 363** is complied with.

So, far as the application under section 311 CrPC is concerned since the evidence of witnesses named in the petition is essential to the just decision of the case, the petition is allowed.

The prosecution is permitted to issue summons upon the seizure witnesses named in the petition and examine them in this case.

The prosecution is directed to expedite the trial.

To 16/05/2025 for submission of report by the Superintendent of Police, Bongaon PD and evidence of two seizure witnesses;

To 17/05/2025 for evidence of CSW Nos.- 06 to 08; and

To 19/05/2025 for evidence of rest CSWs in terms of section 231, Cr.P.C.

The accused is directed to remain present on the next date positively.

In compliance with the mandates of the Hon'ble Apex Court as well as our Hon'ble Court the Investigating Officer is directed to remain present during trial.

The Investigating Officer is also directed to keep the witnesses present in Court.

The Officer-in-Charge of the concerned Police Station is directed to ensure the presence of the Investigating Officer on the date(s) fixed along with witness(es).

If due to some unavoidable circumstances it is not possible for the Investigating Officer to remain present before the Court, the Officer-in-Charge shall depute any other competent police officer who shall ensure the presence of witnesses before the Court on the date of recording of evidence.

It is the duty of the Investigating Officer to protect the witnesses and ensure their presence before the Trial Court, for taking to its logical conclusion. It will help both the victim and the accused person, to have speedy justice which pertains to their right to life as well.

The prosecution is directed to issue process for compelling the attendance of the witnesses and / or the production of the document or thing, if any and to inform the Investigating Officer.

Let a copy of this order be sent to Superintendent of Police, Bongaon PD and Officer-in-Charge of the concerned Police Station for compliance.

The Bench Clerk is directed to do the needful at once.

The case diary is returned to the Ld. PP-in-Charge.

Typed by me

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