

**In the Court of the Additional District & Sessions Judge,
Fast Track Court – I,
Basirhat, Dist.- North 24 Parganas**

Present

Shri Pradip Kumar Adhikary, WBJS,
J O Code (UID No.) - WB916,
Additional District & Sessions Judge,
Fast Track Court – I,
Basirhat, Dist.- North 24 Parganas.

**CNR No.- WBNP 1000 1236 of 2021
SC No.- 91 of 2021
(Registration Number)
arising out of
Haroa PS Case No.- 368 of 2020 dated 17/10/2020**

Charge framed under sections 363/366A/342 of the Indian Penal Code, 1860

State

v.

Prodip Das @ Toko @ Raj

Order No.- 12
13/07/2023

Today is fixed for production of the accused and framing of charge.

The sole accused is produced from judicial custody.

He is remanded to judicial custody till next date.

Neither the PP-in-Charge of the case Shri Prasenjit Jana nor the Ld. Advocate on behalf of the defense Janab Piyaul Islam are found present on repeated calls.

It appears that on the last two dates also although the accused was found present but neither the Ld. PP-in-Charge nor the Ld. Advocate on behalf of the accused were found present on repeated calls.

This Court is facing boycott by the Basirhat Criminal Court Bar Association for the reasons not communicated to the Court by the concerned Bar Association since after an untoward incident happened in the afternoon of 06/04/2023. Unfortunately the Ld. Public Prosecutors, being appointees of the State as well as carrying a primary position and having very important role to play in the administration of justice; particularly in criminal justice system, have joined the chorus.

On 17/04/2023 the matter was duly informed to the Ld. District Judge, North 24 Parganas.

Subsequently, on 02/05/2023 vide Letter No.- 372/ADJ FTC – I/BSHT dated 02/05/2023 the Presiding Officer of this Court requested the Secretary, Basirhat Criminal Court Bar Association to ventilate all or any legitimate, legal and lawful grievance(s) / complaint(s) against the present Presiding Officer of this Court in writing so that the same can be addressed at expeditiously, effectively and properly and also that there can be no room for any confusion and misunderstanding and further that the proceeding of the Court may be continued without any hindrance, obstruction and impediment and no body is deprived of justice.

The Presiding Officer also requested him to forward / send / place the grievance(s) / complaint(s) against the present Presiding Officer of this Court before the appropriate authority in the prescribed manner for redress.

Through the same correspondence the Presiding Officer also solicited active co-operation of the Bar in discharging of his duties, obligations and responsibilities, since the Bar is the mother of judiciary and Ld. Advocates belong to a respected intellectual class of the society and members of the noble profession as well as gentlemen and officers of the Court.

Thereafter, on 12/05/2023 the matter was also informed to the Chairman, Bar Council of West Bengal vide this office letter no.- 420/ADJ FTC-I/BSHT dated 12/05/2023.

But till date no response has been received either from the Basirhat Criminal Court Bar Association or from the Bar Council of West Bengal.

On 26/06/2023 the matter was again ventilated before the Ld. District Judge, North 24 Parganas for placing the matter before the Hon'ble Court for initiation of necessary proceeding for Contempt of Court and also for taking other appropriate action / measures against Basirhat Criminal Court Bar Association and also soliciting necessary instruction vide this office Letter No.- 593/ADJ FTC-I/BSHT dated 26/06/2023.

In the words of the Hon'ble Apex Court - *Judicial function cannot and should not be permitted to be stonewalled by browbeating or bullying methodology, whether it is by litigants or by counsel. Judicial process must run its even course unbridled by any boycott call of the Bar, or tactics of filibuster adopted by any member thereof.*

In the above compelling circumstances in compliance with the mandates of ***Arunava Ghosh and others vs Bar Council of West Bengal : AIR 1996 Cal 331, Aijul Gharami v. State of West Bengal : C.R.M. 12209 of 2019, Harish Uppal (Ex-Capt.) vs. Union of India, (2003)2 SCC 45, Hussain and Another vs. Union of India, (2017) 5 SCC 702, Krishnakant Tamrakar Vs. State of M.P., (2018) 17 SCC 27, C.R.M. 12209 of 2019, Mahabir Prasad Singh v. Jacks Aviation Pvt. Ltd. : 1999 (1) SCC 37, Roman Services Pvt. Ltd. vs. Subhash Kapoor : (2001) 1 SCC 118, B.L. Wadehra (Dr.) v State (Nct Of Delhi) : AIR 2000 Delhi 266, 85 (2000) DLT 114, 2000 (53) DRJ 450, Praveen Pandey vs the State of Madhya Pradesh : Writ Petition No.- 8078 of 2018 and R. Muthukrishnan v. the Registrar General of the High Court of Judicature at Madras : Writ Petition [C] No.- 612 of 2016*** the Court is constrained proceeded with the case.

Very recently on 31/03/2023 in ***Gopa Sastri v. State of West Bengal : CRR No.- 19 of 2012 with CRAN 01 of 2012, CRAN 03 of 2012 and CRAN 05 of 2023*** the Hon'ble Court has been pleased to observe that

19. In this case Learned Trial Court was pleased to reject the petition under Section 239 of CrPC on 20th July, 2011 but without framing the charge, fixed 23rd September, 2011 for consideration of charge. This kind of order is unwarranted and it cause impediment in expeditious trial and defeats the right of the litigants to have speedy justice. Natural corollary to the rejection of prayer for discharge would be commencement of trial with the framing of charge. The provision of Section 239 CrPC. and 240 of Cr.P.C. should be considered as two sides of same coin; whether after toss it is 'head' or 'tail' consequence shall have to follow, without any delay. Of course under Chapter XVII of the Code of Criminal Procedure, if learned Sessions Judge does not find any reason to invoke the provision of Section 227 of Cr.P.C., he shall have to take recourse to Section 228 of the Code of Criminal Procedure, where learned Sessions Judge shall have two avenues to tread upon; either learned Sessions Judge shall have to frame charge under Sub-Section (1) (b) of Section 228 of Cr.P.C. or to invoke the provisions as laid down under Sub-Section (1) 9a) of Section 228 of Code of Criminal Procedure, depending upon the facts of the case. Learned Trial Court shall have to remain alive to this solemn duty while exercising sovereign power and no trial Court thus can or should afford the luxury of fixing two different dates as it has been done in this case.

20. Let a copy of this judgment be sent down to the learned Trial Court for information and necessary compliance. Learned Registrar General is directed to circulate the judgment among the Judges holding criminal trials.

In compliance with the order of the Hon'ble Court the case record is taken up for consideration of charge.

It appears that the copies of police report, first information report recorded under section 154 CrPC, statement recorded under section 161 CrPC of all persons whom the prosecution proposes to examine as its witnesses and all other documents or relevant extract thereof forwarded by the police officer under section 173 of the CrPC were already furnished to the accused, free of cost, in accordance with the provisions of section 207 read with section 209 of the Cr.P.C.

The case record is taken up for framing of charge against the accused.

Considered the record of the case and the documents submitted therewith.

Heard the submissions of the accused.

The accused [has](#) neither produced any materials and documents nor explained grave suspicion against [him](#) emerging from the charge-sheet along with the accompanying materials and documents.

Upon such consideration and hearing the Court is of opinion that there is ground for presuming that the accused [has](#) committed offence which [are](#) exclusively triable by the Court of Session and accordingly, charge punishable under **sections 363/366A/342 of the Indian Penal Code, 1860** is framed in writing against the accused in a separate charge form which is kept with the record.

The said charge is then read over and explained to the accused in Bengali and asked whether [he has](#) pleaded guilty of the offence charged or claimed to be tried to which the accused [has](#) refused to plead guilty by saying “**Ami nirdoshi**” and claimed to be tried.

To 27/09/2023 for evidence of CSW Nos.- 01 & 02;

To 28/09/2023 for evidence of CSW Nos.- 03 & 04 ; and

To 30/09/2023 for evidence of rest CSWs in terms of section 231, Cr.P.C.

[The Superintendent of the concerned Correctional Home is directed to produce the accused on the next date.](#)

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 the Officer-in-Charge of the concerned Police Station for compliance.

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

Typed by me

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