

S.C.58(08)2024 CIS 110 of 2024
CNR WBSP04-000530-2024
J.O Code :- WB00993

Order no.4 dated 05-03-2025

Today is fixed for passing of order.

All the seven accused persons who are on court bail, are absent. Ld advocate for the accused persons filed a petition u/sec 317 Cr.P.C. praying for condonation of absence of the accused persons on this date.

The prayer u/sec 317 Cr.P.C. is considered and allowed.

The accused persons are permitted to be represented by their Ld advocate.

Ld P.P in-charge is present.

On the last occasion, both sides were heard in details in respect of the charges brought against them in the charge sheet.

It would be proper to mention here that of the offences in respect of which charge sheet has been filed against the accused persons, **the only offence u/sec 307 of the Indian Penal Code is Sessions Triable in nature.** All other offences appearing in the charge sheet against the accused persons are Magistrate triable.

Ld advocate for the accused persons submitted before this court that it is only because of section 307 I.P.C, that the case has become sessions triable in nature. But if we go through the materials prima facie available, it can be seen that there is no material at all to frame charge against any accused u/sec 307 I.P.C.

Ld advocate further submitted that from the written complaint it can be found that the victim/defacto complainant has in page 3 of the complaint in para-II mentioned a single line. She has said in the complaint “ *again on December 2018 I went to Dubai with my husband for one month as I tried to keep the relationship anyhow but there in my husband **made a plan to kill me by putting pillow on my face.***”

Ld advocate submitted that except this single line, there is no mention at any other place that any of the accused persons ever attempted to murder the victim. So there is no material at all to frame charge u/sec 307 I.P.C. Accordingly, this case should not be tried in this court. Rather, it should be sent before any Ld Magistrate to try the same in respect of offences Magistrate triable in nature.

Ld P.P in-charge did not raise any kind of objection. Rather, he supported the contention of Ld Defence Counsel by saying that in the C.D, there is no prima facie evidence/incriminating material, on the basis of which charge against any of the charge sheeted accused persons could be framed u/sec 307 I.P.C.

I have heard both sides.

I have perused documents available on record. I have also perused the C.D.

It is a fact that victim/defacto complainant in the written complaint/FIR simply stated that in December 2018 when she had been to Dubai with her husband for one month, **her husband made a plan to kill her by putting pillow on her face.**

So it is clear that in the written complaint itself, there is no allegation of any attempt to murder the victim. It is only her imagination that appears in the complaint. She has not even explained that what kind of plan was made by her husband to kill her.

Now I have considered copy of the statement of the victim recorded u/sec 164 Cr.P.C. In her statement before the Ld Magistrate, the victim has narrated that while she was staying in Dubai, her husband twice attempted to kill her by pressing a pillow against her face.

I also find from the C.D. that the Investigating Officer has recorded statements of all the persons whom she has charge sheeted. These persons are named as accused in the FIR.

The I/O has recorded the statement of the victim/defacto complainant and her mother. The defacto complainant in her statement has not narrated about any kind of attempt to murder her. In the statement there is also not any mention of any plan to murder her. Her mother Yasmin Khan has also not narrated about any attempt to kill her daughter. She has only narrated that her daughter had informed her over phone that Washim wants to kill her by pressing pillow against her face.

Apart from this, in the course of investigation, the I/O has collected and seized some documents relating to marriage, some photographs and one pen-drive.

After having considered entire factors, I am of the view that apart from the statement of the V.G recorded u/sec 164 Cr.P.C., there is no other prima facie material in respect of the offence to frame charge u/sec 307 I.P.C.

After having considered entire facts and circumstances, it seems that it would be proper to frame charge against the husband Washim Akram in respect of offences punishable u/sec 307/323 I.P.C. If this record is at this stage transmitted to the Ld Magistrate and if during trial, adequate oral/documentary evidence comes in respect of the allegation u/sec 307 I.P.C., which makes the case sessions triable, then that shall cause travesty of justice. Accordingly, I consider that charge u/sec 307/323 I.P.C. should be framed only against the husband and **so this case should be tried in this court.**

As the personal laws of the parties do not prohibit polygamy, I do not think it fit to frame charge u/sec 494 I.P.C. against accused Washim Akram and against accused Naz Khan whom he is alleged to have married for the second time.

There is prima facie ingredient to frame charge against all the accused persons **except Naz Khan** in respect of offence punishable u/sec 498A I.P.C.

There is prima facie material to frame charge u/sec 406 I.P.C. against all the accused persons **except accused Naz Khan.**

I do not find any prima facie evidence to frame charge against any of the accused persons **in respect of offences punishable u/sec 3/ 4 D.P. Act.**

Accordingly, the charges against the accused persons shall be framed.

The prayer of Ld Defence Counsel for sending back the case record to Ld CJM Alipore stands rejected.

All the accused persons are directed to appear on the next date positively.

To 29-04-2025 for appearance of all the seven accused persons and for framing of charge.

D/C by me.

Addl. Dist & Sessions Judge,
F.T.C.-VIII, Alipore.

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