

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).1309/2007

(From the judgement and order dated 31/01/2007 in CRR No.1574/2006,CRR No.2311/2006 of The HIGH COURT OF CALCUTTA)

SAHA FARID ALI SAHA @ SAHA FARID AND ANR Petitioner(s)

VERSUS

STATE OF WEST BENGAL AND ANR. Respondent(s)

(With appln(s) for stay,permission to file additional documents,impleadment as party respondent and office report)
(FOR FINAL DISPOSAL)

Date: 30/01/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. Ratnakar Dash, Sr. Adv.
Mr. Rajesh,Adv.

For Respondent(s) Mrs Sarla Chandra,Adv.

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rr.1

Mr. Anip Sachthey ,Adv
Mr. Mohit Paul, Adv.
Ms. Shagun Matta, Adv.

For impleading Mr. M Qamaruddin, Adv.
party Mr. Ambar Qamaruddin, Adv.
Ms M. Qamaruddin,Adv.

UPON hearing counsel the Court made the following
O R D E R

No orders are called for in the application for impleadment and the same stands dismissed accordingly.

Leave granted.

The appeal stands disposed of in terms of the signed order.

[Charanjeet Kaur] [Kusum Gulati]
Court Master Court Master
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 320 OF 2012
(Arising out of SLP(Crl.) No. 1309/2007)

Saha Farid Ali Saha @ Saha Farid .. Appellant(s)
and Anr.

Versus

State of West Bengal and Anr. .. Respondent(s)

O R D E R

Leave granted.

Challenge in this appeal is to order dated 7 th July,

2006, passed by the Additional Sessions Judge, Fast Track, 2nd Court, Contai, District Purba, Medinipur, West Bengal whereby he has directed framing of charges against the appellants for offences punishable under Sections 363/34, 365/366/493/497 and 498 read with Section 109 of the Indian Penal Code, 1860, (for short "the IPC"). Since, we are of the opinion that the impugned order deserves to be set aside, on the ground that it does not even remotely refer to any material which led the learned Judge to form an opinion as to the existence of factual ingredients constituting the aforesaid offences, alleged against the appellants, we deem it unnecessary to mention the facts, giving rise to this appeal.

It is well settled that at the stage of framing of

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charge, the Court is required to evaluate the material and documents placed before it by the prosecution, with a view to find out if there is ground for "presuming" that the accused has committed an offence. It is true that at this stage the Court is not expected to record a finding that the material on record is likely to lead to a conviction, yet there has to be some indication in the order as to what weighed with the Court to form the opinion that a case for framing of charge exists.

In the present case, it is evident from the order framing the charges that the said basic principles have not been kept in mind by the Court while directing framing of charges. We are of the opinion that without reference to any material, the observation that "having gone through the material on record, I am of the opinion that there is ground for presuming that the accused Akhtar Ahmed might have committed the offence punishable under Sections 363/365 IPC read with Sections 34, 366 and 493 and 497 and 498 IPC read with Section 109" was not sufficient to

conclude that the ingredients constituting the alleged offences were in existence.

Consequently, without commenting on the merits of the case, we set aside the order framing the charges and remit

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the matter back to the trial Court for fresh consideration as to whether it is a fit case for framing the alleged charges against the accused except accused No. 1 Janab Akhtar Ahmed, who is stated to have expired, after affording adequate opportunity of hearing to the parties concerned.

Since the alleged incident had taken place some time in the year 2004, we direct the trial Court to take the decision in the matter, as expeditiously as practicable, and in any case, not later than one month from the date of receipt of a copy of this order.

The appeal stands disposed of accordingly.

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[D.K. JAIN, J.]

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[ANIL R. DAVE, J.]

NEW DELHI,
JANUARY 30, 2012.