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**(2000) 07 CAL CK 0003**

**Calcutta High Court**

**Case No:** Criminal Ref No. 1 of 1994

S.M. Mira Tamang

APPELLANT

Vs

State of West Bengal

RESPONDENT

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**Date of Decision:** July 27, 2000

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 211(5)
- Penal Code, 1860 (IPC) - Section 307

**Citation:** (2001) 1 ILR (Cal) 329

**Hon'ble Judges:** Satyabrata Sinha, J; Debiprasad Sengupta, J

**Bench:** Division Bench

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**Judgement**

Satyabrata Sinha, J.

In this reference u/s 395(2) of the Code of Criminal Procedure the two points which are to be decided by this Court are as follows:

1. Whether the learned Judge is competent to take the plea of the accused persons after framing of charges in respect of the offences not exclusively triable by the court of sessions when he decides to send back the case u/s 228(1) of the Code of Criminal Procedure.

2. Whether in this case the learned Magistrate, who will hold the trial, will take the plea of the accused persons again in accordance with Section 240(2) of the Code of Criminal Procedure.

2. On the basis of a complaint lodged by one Shri Jyotiprakash Khan, Amherst Street P.S. Case No. 34 dated February 3, 1994, under Sections 148, 149, 448, 427, 325 and 307 of the Indian Penal Code and Section 25 (1B)/ 27 of the Arms Act was registered. On completion of investigation a charge sheet was submitted by the Police under Sections 148, 149, 448, 427, 326 and 307 Indian Penal Code against 20 accused persons. As the offence u/s 307 Indian Penal Code is exclusively triable by the court

of Sessions, the case was committed to the court of the learned Chief Judge, City Sessions Court. At the stage of framing of charge after hearing the learned Public Prosecutor in charge as well as the learned Lawyers for the accused persons and after considering the records of the case the learned Judge was of the opinion that the ingredients of an offence u/s 307 of the Indian Penal Code are not inexistence in the present case and accordingly he framed charges against all the accused persons under Sections 148, 149, 448, 427, 324 and 326 of the Indian Penal Code. It appears further that after framing of charges the learned Judge took the plea of the accused persons. Thereafter the learned Judge sent back the case to the court of learned Additional Chief Metropolitan Magistrate, Calcutta for trial of the case under the provision of Section 228(1) of the Code of Criminal Procedure. Section 228(1) of the Code of Criminal Procedure enjoins framing of charge by the learned Judge against the accused persons but the said section does not provide for taking of plea of the accused persons by the learned Judge. Accordingly this reference was made to this Court for deciding the said question as referred to above.

3. Framing of charge by a Criminal Court is a decision of the Court which precedes trial and in all cases, except summons cases, such decision is to be arrived at mandatory after; i) considering materials available on record and ii) on hearing both the parties to the proceedings. It must not be lost sight of that the stage of framing of charge is also the stage of discharge of the accused if the materials on record fall short of required quality to warrant framing of charge. At this stage of the proceeding (framing of charge) the court must apply its mind to the issue of framing of charge or discharging the accused very diligently. Casualness in the approach of the Court at the stage is totally forbidden.

4. Once the charge is framed against, an accused, it is equivalent to a statement that every legal condition required by law to constitute the offences charged was fulfilled in the particular case, as envisaged in Section 211(5) of the Code of Criminal Procedure. The expression "equivalent to a statement as appearing in Section 211(5) of the Code is very significant and when considered with the provision of taking plea, it becomes clear that such "statement" is made through Court and the learned Magistrate or the Judge who hears the parties and considers the materials before the charge is framed, is the "Speaker" of the Court. The provisions of Section 211(1), (2), (3) and (4) also enjoins that the statement of facts constituting the offence and the law applicable to it, must be by the court which frames the charge.

5. Taking of plea of the accused is one of such acts which prohibits the participation of the lawyer or the representative of the accused before the court and this part of the proceedings, like that of the examination of the accused u/s 313 of the Code of Criminal Procedure, is strictly confined between the court and the accused. At this stage the presiding officer of the court, who has framed the charge, explains to the accused the meaning, purport and implication of the charge so framed. Every charge so framed shall be "read over and explained to the accused and the plea of

the accused is to be taken. In the event the accused pleads guilty there will be no trial on evidence, otherwise trial is a must.

6. There can be no doubt that the court which frames the charge should take the plea of the accused. Such procedure should be adhered to even in a case where a sessions Judge frames a charge in exercise of his power u/s 228(1)(a) of the Code of Criminal Procedure. It would be unwise to hold that a Session Judge would consider the materials, hear the parties, frame charge in respect of an offence triable by a Magistrate and thereby make the statement of law and facts about the offence, yet the plea will be taken by the learned Magistrate, who had no participation whatsoever before and after the framing of charge.

7. It is pertinent to note in this context the words "transfer the case for trial" incorporated in Section 228(1)(a) of the Code which implies the legal position that when the case reaches the court of the learned Magistrate plea had already been taken.

8. Lastly, it will be sheer wastage of public time and will cause delay to the proceedings if the charge is framed by the learned Sessions Judge and plea is taken by the learned Magistrate to whom the case is transferred. Avoidable delay, by all means, should be avoided.

9. In view of the discussion made above we are of the view that there is nothing wrong with the recording of the plea of the accused persons by the learned Judge. Since the plea has already been recorded by the learned Judge, the learned Magistrate now shall proceed with the trial in accordance with law. The reference is accordingly disposed of.