

## Dilip Mukherjee Vs State of West Bengal

**Court:** Calcutta High Court

**Date of Decision:** Dec. 15, 2005

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 167(5), 173(5), 190(1), 401, 482  
Penal Code, 1860 (IPC) â€” Section 302, 307

**Hon'ble Judges:** Arun Kumar Bhattacharya, J

**Bench:** Single Bench

**Advocate:** Tapas Midya, for the Appellant; S.S. Roy, for the Respondent

**Final Decision:** Dismissed

### Judgement

Arun Kumar Bhattacharya, J.

The hearing stems from an application u/s 401 read with Section 482 Cr. PC filed by the petitioner praying

for quashing the proceeding being Sessions Case No. 11(9)99 u/s 302 IPC pending in the Court of learned Additional Sessions Judge, 11th

Court, Alipore, 24 Pgs(S).

2. The circumstances leading to the above application are that one Jamuna Mondal, wife of Dulal Mondal, a resident of 193 Raja Dinendra Street,

Calcutta - 700 009 with her husband, two sons and one daughter, used to work as a cook in the house of one Chandrima Das. A deep relation

developed between her and the present petitioner Dilip Mukherjee who used to work in the house of one Nirmal Roy, uncle of Chandrima, and

even after leaving her job she maintained her connection with the petitioner. On 23.06.93 at about 1.45 p.m. at the call of the petitioner when she

had been to the ground floor room of 189 Raja Dinendra Street, the petitioner all sudden started abusing her and assaulted her with a sharp-cutting

weapon from the back on her neck and shoulder resulting in her severe bleeding, injury and fall on the ground followed by her removal to R.G.

Kar Medical College & Hospital where she succumbed to injuries on 20.07.93. On the basis, of FIR, Ultadanga P.S. Case No. 77 dated

23.06.93 u/s 307 IPC was started which, was subsequently converted to one u/s 302 IPC. After completion of investigation charge sheet u/s 302

IPC was submitted on 05.05.94. It has been contended by the petitioner that no document u/s 173(5) was forwarded to the learned Magistrate,

and the investigation could not be completed within three years in accordance with the provisions of Section 167(5) Cr. PC, as amended.

3. Mr. Tapas Midya, learned Counsel for the petitioner, on referring to the cases of Satya Narain Musadi and Others Vs. State of Bihar, ,

Birendra Kumar Roy v. Hindusthan Fertiliser Corporation reported in 101 CHN 383 and Kalpana Ghosh v. State of W.B. reported in 100 CHN

603 advanced argument contending that since charge sheet was submitted unaccompanied by the documents contemplated under Sub-section (5)

of Section 173 Cr. PC, and the learned Magistrate had no occasion to look to the said documents, cognizance taken by the learned Magistrate

cannot be said to be in accordance with the law and as such the proceeding is liable to be quashed. Mr. Midya relying on the cases of

Shaktisadhan Majhi v. State reported in 1993(11) CHN 154 and Ajit Kumar Barman v. State of West Bengal reported in 1995(2) CHN 96

argued that since the charge sheet was submitted beyond the period specified in Sub-section (5) of Section 167 Cr. PC, as substituted by the

West Bengal Amendment Act, 1988, cognizance taken of the offence on the basis of such investigation is bad in law and void. Mr. S.S. Roy,

learned Counsel for the State, on the other hand, on referring the cases of P.V. Venkateswaran v. State reported in 1998 C.Cr.LR (Cal.) 139,

Suresh Mahato v. State of West Bengal reported in 1997 C.Cr.LR (Cal.) 122 and Inspector of Police, C.B.I., v. Manique Majumdar reported in

1997 C.Cr.LR (Cal.) 126 submitted that when the police report with sufficient particularity and clarity specifies the contravention of the law which

alone can well constitute the foundation for taking cognizance by the learned Magistrate u/s 195(1)(b) Cr. PC, there was nothing wrong on the part

of the learned Magistrate in taking cognizance without looking into or considering the documents and statements as contemplated under Sub-

section (5) of Section 173. On referring the case of Md. Yusuf Rather v. State of West Bengal reported in 1998 C.Cr.LR (Cal.) 469, Mr. Roy

further contended that the relief u/s 167(5) Cr. PC is available only when the investigation is pending, but where charge sheet has been submitted

after completion of investigation there is no scope for availing of the relief u/s 167(5).

4. Therefore, two questions involved in the present case are; (1) whether the criminal prosecution against the petitioner is liable to be quashed for

non-consideration of the documents and statements u/s 173(5) Cr. PC. and (2) whether cognizance taken by the learned Magistrate of the offence

on the basis of chargesheet alleged to have been submitted after expiry of the statutory period as embodied in Sub-section (5) of 167 Cr. PC, as

substituted by the West Bengal Amendment Act, 1988 is bad in law and void.

5. So far as the first question above is concerned, the expression ""cognizance"" means to take judicial notice of an offence alleged for the purpose

of proceeding in a particular way. In the present case, the relevant portion of the order dated 05.05.94 runs as follows:  
"".... Received challan u/s

302 IPC against the accused viz. Dilip Mukherjee who is on C.B. Cognizance is taken ... "" . From the above it cannot be inferred that the

chargesheet was submitted unaccompanied by the documents or papers as contemplated under Sub-section (5) of Section 173 Cr. PC. That

apart, the report as envisaged by Section 173(2) has to be accompanied as required by Sub-section (5) of Section 173 the documents and

statements of the witnesses therein mentioned and one cannot divorce the details which the report must contain as required by Sub-section (2)

from its accompaniments which are required to be submitted u/s 173(5). The whole of it is submitted as a report to the Court, as was observed in

the case of S.J.V. Musadi (supra). So, the said challan or report can be said to have been accompanied by all the documents as envisaged in Sub-

section (5) of Section 173 Cr. PC, otherwise there was no scope by the learned Magistrate to supply copies documents on 29.07.99, as is evident

from the documents filed. Besides, the word "shall as used in Sub-section (5) of Section 173 cannot be interpreted as mandatory but directory, as

was held in the three Judges Bench decision in Central Bureau of Investigation (CBI) Vs. R.S. Pai and Another, . In other words, if the police

report is submitted unaccompanied by the documents as contemplated by Sub-section (5) of Section 173 Cr. PC and the Magistrate takes

cognizance on the basis of charge sheet or police report, there will be no illegality in taking such cognizance. The decision in S.N. Musadi's case

(supra) unambiguously laid down the proposition that for taking cognizance of an offence on a police report u/s 190(1)(b) Cr. PC. a Magistrate is

not at all required to look into or consider the documents and statements within the meaning of Section 173(5) even when the police report with

sufficient particularity and clarity specifies the contravention of the law which is the alleged offence. Therefore, the above contention of Mr. Midya

is not at all sustainable.

6. As regards the second question above, Mr. Midya appears to have overlooked that police report in the present case was submitted on

05.05.94 i.e. within 11 months from the time of arrest of the petitioner on 23.06.93, and so the question of the cognizance being bad in law and

void on account of alleged submission of police report after the statutory period as embodied in Section 167(5) Cr. PC. as substituted by the West

Bengal Amendment Act, 1988, is out of the way.

7. In view of the above discussion, the present application being devoid of any merit be dismissed.

8. Let a copy of this order along with the LCR be sent down at once to the learned Court below with a direction to dispose of the case as

expeditiously as possible, preferably within a period of four months from the time of receipt of the record.