

Criminal Revision**PRESENT : The Hon'ble Justice Ashim Kumar Roy****Judgment On: 15-02-2010.****C.R.R. No. 162 of 2010****Falendra Singh****versus****The State Of West Bengal****Point:**

Framing of charge: At the stage of consideration of question of framing of charge if the Learned Sessions Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Sessions, although the Judge is empowered to frame charge, but after framing of charge, the Learned Judge has to transfer the case for trial to the concerned Judicial Magistrate - Indian Penal Code –Ss. 228(1)(a), 304A

Fact: Against the petitioner charge-sheet has been submitted for an offence punishable under Sections 279/304 of the Indian Penal Code and the case was committed to the Court of Sessions for trial. However, considering the materials available against the petitioner the Ld. District & Sessions Judge framed charge under Sections 304A of the Indian Penal Code.

Held: An offence punishable under Section 304A of the Indian Penal Code is a Magistrate triable case. According to Section 228 sub-section (1)(a) at the stage of consideration of question of framing of charge if the Learned Sessions Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Sessions, although the Judge is empowered to frame charge, but after framing of charge, the Learned Judge has to transfer the case for trial to the concerned Judicial Magistrate. (Paragraph – 2)

For Petitioners : Mr. Suman De

For State : Mr. Tirthankar Ghosh

The Court: 1. Against the present petitioner charge-sheet has been submitted for an offence punishable under Sections 279/304 of the Indian Penal Code and the

case was committed to the Court of Sessions for trial. However, considering the materials available against the petitioner the Learned District & Sessions Judge, Howrah framed charge under Sections 304A of the Indian Penal Code.

2. Admittedly, an offence punishable under Section 304A of the Indian Penal Code is a Magistrate triable case. According to Section 228 sub-section (1)(a) at the stage of consideration of question of framing of charge if the Learned Sessions Judge is of the opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Sessions, although the Judge is empowered to frame charge, but after framing of charge, the Learned Judge has to transfer the case for trial to the concerned Judicial Magistrate. Although the Learned Sessions Judge framed charge under Section 304A of the Indian Penal Code, which is triable by a Court of Magistrate, still he made no order for transfer of the case to the Court of the concerned Magistrate and proceeded with the trial. The plea taken by the Learned Judge is not in accordance with law and accordingly the order impugned is set aside. The Learned Judge is directed to proceed with this matter in accordance with Section 228 of the Code of Criminal Procedure. He is further directed to take all necessary steps in this regard within a week from the date of communication of this order.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)