

Criminal Revisional  
Present: The Hon'ble Justice Ashim Kumar Roy  
Judgment On : 05-05-2010.  
*C.R.R. No. 311 of 2010*  
*Madan Biswas & Ors.*  
*versus*  
*The State Of West Bengal*

Points:

**Quashing:** If court finds no prima facie materials against the accused whether charge against him can be quashed- Code of Criminal Procedure, 1973 S. 482

Facts:

It was the accused Madan and Swapan who pulled and tried to remove the wearing apparels, viz., Saree of the complainant. Therefore, the submission of charge-sheet under Section 354 of the Indian Penal Code so far as the other accused persons are concerned are not at all justified. So far as the other allegations are concerned, according to the complainant and other witnesses the petitioners in a body came to the house of the victim to search for her husband and criminally trespassed into their house and not having found him there, started ransacking the household articles and assaulted the victim and looted away gold ornaments and cash money etc.

Held:

However, so far as the accused Santosh Sarkar, the petitioner no. 9 is concerned, no allegations have been made against him in the First Information Report lodged by the victim except mentioning his name in the list of the accuseds. Similarly, from the statement of the witnesses, who were examined by the police during the investigation name of Santosh Sarkar has not been transpired. Accordingly, the submission of charge-sheet against him is not at all justified. Para-4

The impugned charge-sheet against the accused no. 9 Santosh Kumar Sarkar stands quashed as Court does not find any prima facie materials against him.

So far as the charge-sheet under Section 354 of the Indian Penal Code against the remaining eight accuseds are concerned as The Court does not find any prima facie materials except against the accused Swapan Mistry and Madan Biswas the charge-sheet for the said offence as against the remaining six accused/petitioners stand quashed. Para-5

For Petitioners : Mr. Himangshu De  
Mr. Suman De  
For State : Mrs. Krishna Ghosh

The Court:

Invoking Section 482 of the Code of Criminal Procedure, the petitioners have approached this Court for quashing of a charge-sheet relating to the offences punishable under Sections 148/149/447/448/427/354/323/379 of the Indian Penal Code.

2. Heard Mr. Himangshu De, the Senior Advocate appearing with Mr. Suman De as well as the Junior Government Advocate. Perused the Case Diary.

3. It has been contended before this Court except the petitioner nos. 1,

2 and 9 all are female, as such question of committing an offence punishable under Section 354 of the Indian Penal Code by them does not at all arise. It was further contended that no specific allegation has been made against any particular person who has committed the offence of theft.

4. Now, having regards to the allegations made in the First Information Report by the victim Dipika Biswas as well as from the statement of the witnesses recorded by the police during the course of investigation, it appears that it was the accused Madan and Swapan who pulled and tried to remove the wearing apparels, viz., Saree of the complainant. Therefore, the submission of charge-sheet under Section 354 of the Indian Penal Code so far as the other accused persons are concerned are not at all justified. So far as the other allegations are concerned, according to the complainant and other witnesses the petitioners in a body came to the house of the victim to search for her husband and criminally trespassed into their house and not having found him there,

started ransacking the household articles and assaulted the victim and looted away gold ornaments and cash money etc. On the face of those allegations the submission of charge-sheet for rest of the offences against the petitioners cannot be said to be unjustified. However, so far as the accused Santosh Sarkar, the petitioner no. 9 is concerned, I find no allegations have been made against him in the First Information Report lodged by the victim except mentioning his name in the list of the accuseds. Similarly, from the statement of the witnesses, who were examined by the police during the investigation name of Santosh Sarkar has not been transpired. Accordingly, the submission of charge-sheet against him is not at all justified.

5) In the result, the impugned charge-sheet against the accused no. 9 Santosh Kumar Sarkar stands quashed as I do not find any prima facie materials against him. So far as the charge-sheet under Section 354 of the Indian Penal Code against the remaining eight accuseds are concerned as I do not find any prima facie materials except against the accused Swapan Mistry and Madan Biswas the charge-sheet for the said offence as against the remaining six accused/petitioners stands quashed.

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.* )