**IN THE HIGH COURT AT CALCUTTA**

**CRIMINAL REVISIONAL JURISDICTION**

**APPELLATE SIDE**

**Present:-**

**HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.**

**CRR 127 OF 2025**

**MD. WASIM @ WASSI**

**VS.**

**STATE OF WEST BENGAL & ANR.**

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| **For the Petitioner** | **:** | **Mr. Sandip Kumar Bhattacharya, Adv.** |
| | | **Mr. Dipta Dipak Banerjee, Adv.** |
| | | **Ms. Srijita Dhar,Adv.** |
| | | **Ms. Srilekha Dhar,Adv.** |
| **For the State** | **:** | **Mr. Kallol Mondal, Learned Public Prosecutor** |
| | | **Mr. Pritam Roy, Adv.** |
| | | **Ms. Samira Grewal, Adv.** |
| **Heard On** | **:** | **02.09.2026** |
| **Judgement on** | **:** | **20.11.2026** |
| **Uploaded on** | **:** | **20.11.2026** |

**CHAITALI CHATTERJEE DAS, J.:-**

**1.** This revisional application has been filed for setting aside the order dated 11.12.2024 passed by the learned Additional District and Sessions Judge,

14th Court, Alipore in connection with Sessions Trial no. 127 of 2024. The charges are framed under Section 120B/302/307/427 of IPC.

***Brief fact of the case***

**2.** The case under reference was started on the basis of a letter of complaint dated 18.3.2024, before the Officer-in-Charge of Garden Reach Police Station by one Pranay Tamang, S.I of Police Station upon receiving a telephonic information during the intervening night of 17.3.2024 and 18.3.2024, at about 00:02 hours to the effect that a five storied under-construction building situated at J – 506B and J– 506C, Azhar Molla Bagan, Kolkata- 700024 has been collapsed. The police immediately reached at the spot and laid by the local persons to the adjacent premises consisted of several tiled, single story rooms which were severely damaged and they were informed by the local people that the construction building was being developed by a local promoter named Md. Wasim, the petitioner herein . It was further alleged that the appropriate officials were called to carry out the rescue of the person trapped underneath the debris. During searching found seven persons to be dead and several others critically injured. The officers from the Kolkata Municipal Corporation came into the spot and submitted a written complaint to the officer in charge of the Garden Reach Police Station to the effect that the construction was totally unauthorised and a separate proceeding was being initiated in that regard. It was learnt that the present petitioner and others had deliberately constructed the said building without permission and committed the offence, which is so imminently dangerous that it in all probability must cause death as well as bodily injury.

Accordingly, the Garden Reach Police Station case number 55 of 2024 dated 18.3.2024, under Section 302/307/288/427/34 of the Indian Penal Code was registered against the present petitioner and others.

**3.** On completion of investigation, the investigating agency filed a charge sheet vide charge sheet no. 66 of 2024 dated 13.6.2024 against the present petitioner and five other persons for the commission of offences punishable under section 302/307/288/427/34/120B of the Indian Penal Code. The learned Magistrate took cognizance of the same and thereafter committed the case to the Court of Sessions and it was transferred to the Court of learned Additional District and Sessions Judge, 14th Court, Alipore for trial and disposal. On 11.12.2024, the case was fixed for consideration of charge and by the order impugned the learned Trial Court framed the charges against the present petitioner and other persons under the aforesaid sections. Being aggrieved, this revision application has been filed.

***Submissions***

**4.** Learned advocate representing the petitioner argued that the case was started under section 302/307 of the Indian Penal Code, despite the fact that the letter of complaint did not disclose any of the essential elements of the said offences. No explanation was given as to why, without any enquiry the case was registered under section 302/307 of the Indian Penal Code in a case involving the collapse of an under-construction building. The further stand taken by the learned advocate is that the entire material collected by the prosecution is evident from the charge sheet that the petitioner was not the one who was carrying the day-to-day construction work and it was being

carried out as per the supervision and instruction of one of the accused co-accused Sk. Ripon. The role of the co-promoter Abdul Rauf Nizami alias Sheru also surfaced who died in the incident. It is further argued that the various statements of witnesses recorded under section 161 of the Code, including the statements of local persons and those who were injured in the incident specially the statement of Sarika Begum and Sahiluddin Gazi clearly stated that construction was being carried out by said Ripon. The main allegation is that the petitioner purchased substandard materials and also directed the labourers to mix the same in improper quantities.

**5.** The prosecution recorded statements of two of the vendors who sold materials, but none of them stated that materials were of the said locality and the same was accepted by the prosecution and cited the persons as witnesses. In addition, the prosecution has failed to show the direct involvement and liability of the petitioner as the concept of vicarious liability is alien to criminal law and hence the petitioner cannot be held liable for any act taken by the labour contractor or any other person regarding the construction.

It is the contention of the learned advocate that in the present case, there is no element of intention or knowledge, which is the essential to establish an offence of murder. In order to establish under Section 302 or 307 of the Indian Penal Code, the prosecution must show that the petitioner had the requisite knowledge to constitute the said offence and it is settled principle of the law that the term knowledge in the context of criminal law imports a degree of certainty. A mere general knowledge that there is likely

to occur from an act will not be sufficient to bring a case under the fourth category of Section 300. The knowledge has to be of a practical certainty and that has to be the direct and motivating force of the act. It is evident from the charge sheet that the petitioner did not have the requisite degree or knowledge that on a specific date and time the building so constructed after engaging a considerable amount of fund will collapse and 15 persons including the Co-promoter, will be there to succumb to the accident. Nothing can be evidenced from the charge sheet that as to why the petitioner would intend to kill those 15 persons when admittedly, there was no enmity between them. The learned Trial Court has attributed different degree of knowledge to the petitioner in the head of charge as the motivating force of the actions. No hearing on the point of charge was made on behalf of either side and the accused persons did not get any opportunity for filing any application as the copies of several documents which the prosecution intends to rely on agreement and other items were not supplied to the accused persons. The prosecution did not open its case under Section 226 of the Code of Criminal Procedure, 1973 and the charge was framed only on the basis of filing of a draft charge. It is an afterthought to shield the appropriate administrative authorities, including KMC as the letter of complaint of the case and the reference speaks about the Garden Reach Police Station case no. 56 dated 18.3.2024 and hence this case should have been numbered after the complaint lodged by the police authorities allegedly being intimated about the collapse of the building.

**6.** The Learned Advocate has relied upon the case of ***Dr. Mani Kumar Chhetri versus State of West Bengal, CRR 1918 of 2016*** dated 30.6.2017, relevant portions page 18, 23 to 25, 29 to 31, 32, 33, 34, 35, 36, 39 and 41 to substantiate that the degree of knowledge has contemplated under section 299 of the IPC imports a degree of certainty. Further relied upon the decision of ***Yuvraj Laxmilal Kanther and another vs State of Mahrashtra[1],*** paragraph 12 and 14 where on analysis of the essential element to constitute an offence of homicide it was held that in absence of intention or sufficient degree of knowledge, the same would not lie. The learned advocate put reliance upon the case of ***Bhopal gas tragedy case*** namely ***Keshub Mahindra vs State of Madhya Pradesh[2], Uphaar cinema tragedy case Sushil Ansal versus State through CBI[3]*** where the charges were framed under section 304A of the Indian penal code. On the point of framing of charge under section 226/227 of the Code of Criminal Procedure, the learned Advocate would reliance upon the decision of ***Banti alias Guddu versus State of M.P[4], Sajjan Kumar vs CBI[5] paragraph 17, Manishaben Gajjugiri Goswami vs State of Gujarat, Criminal Revisional Application 245 of 2021 of Gujarat High Court, para 12*** and ***Dipakbhai Jagdishchandra Patel vs State of Gujarat and Anr[6]*** para 71-102 .

[1] (2025) 3 SCR 502
[2] (1996) Supp 6 S.C.R 285
[3] (2014) 2 SCC (Cri) 717
[4] 2004 SCC (cri) 294
[5] (2008 )11 S.C.R 669
[6] (2019) 6 S.C.R 701

**7.** Per Contra, it is argued on behalf of the prosecution that the allegation was serious in nature and the entire construction was made without obtaining any permission .The status of the petitioner was one of the promoter /developer and it was found during investigation that he himself directed the labour contractor to mix up the construction materials which ultimately resulted in death of 15 innocent people .Therefore the petitioner cannot take the stand that he had no knowledge or intention since he never thought that a five storied building constructed without obtaining permission can be detrimental for the residents or the neighbours at any point of time . It is admitted that he had no requisite knowledge about the kith and kin of construction but he along with his co-promoter indulged themselves in proceeding with the construction without having any sanctioned building plan. It is further submitted that the Learned Judge has rightly framed the charge under Section 302 IPC and if in course of trial the prosecution fails to prove the same and the court thinks it fit and proper the accused may be convicted for lesser offence and to that extent the petitioner will not be prejudiced if the trial continued with the charge of Section 302 IPC. On the contrary once the court framed the charge for committing lessor offence and the trial proceeded even if the ingredients for commission of much graver offence is established the court will face difficulty in passing the order of conviction .In this regard relied upon the decision of the Hon'ble Supreme Court ***Rafiq Ahmed alias Rafi vs State of Uttar Pradesh***[7] paragraph 34,35,36,41,43,53,54,55. It is further argued that the decisions relied upon by the learned Counsel of the petitioner are mostly against an order refusing

[7] (2011) 8 SCC 300

to discharge the petitioner or assailing an order of conviction and are factually distinguishable. Accordingly prayed for dismissal of this revisional application.

***Analysis***

**8.** Heard the submissions of the learned Advocates. The revisional application has been filed against an order whereby the charge has been framed against the present petitioner under section 302/307/120B IPC . The contention of the learned Advocate of the petitioner as can be gathered from the arguments made before the Court that the charge framed was without giving any opportunity of hearing to the petitioner and on the basis of the draft charge submitted before the court the charge was framed against the petitioner under section 302/307 Penal Code when the ingredients to attract the said offences are absolutely missing and if the trial is allowed to be continued on the basis of this charge and the petitioner is being convicted for any other offences for which no charge has been framed, he will be highly prejudiced since he will not get any opportunity to make out his case with regard to the commission of the said offence.

**9.** On perusal of the complaint lodged the factual matrix disclose that the petitioner was the financer of the construction and the day-to-day affairs of the building development were being exclusively, looked after by Abdul Rauf Nizami alias Sheru who died on spot. The written complaint lodged before the officer-in-charge Garden reach Police Station disclose that a five storied under construction building collapsed and several people were trapped under the debris and also the tile shed single stored rooms situated nearby

that building were damaged severely. On examination of local people, it could be gathered that the premises was a one storied tiles shaded house and the building which was under construction was a five storied building. The landlord of the said building were Pappu, Raza, Naseem and it was developed by one local promoter, namely Md. Wasim @Wassi ,the petitioner herein . The construction started from December 2022 on a land measuring about 3 cottah for which an agreement was made between the landlord and the promoters. It further transpires that after the officials of the Kolkata Municipal Corporation Authority who arrived at the spot it was revealed that no permission was taken from the concerned Authority for construction of the said building. The building was constructed with four 2 BHK flats in each floor measuring about 500 square ft. On 17.3.2024 in the night about 23:30 hours, the local people heard a huge sound due to collapse of the entire building. During investigation, the team of experts from Jadavpur University from the department of civil engineering, Department of construction, Engineering and Department of architecture also visited the place and examined the samples of debris materials, iron, rods, etc, and the interim report suggested that the quality of hard concrete appears to be doubtful due to poor category range. The column dimensions were less than the minimum recommended by IS code. The steel samples collected from the site are not up to the mark in terms of yield and ultimate strength. However at the time of submission of charge sheet the final report was not received and also the report from National Test House Salt Lake was pending.

It was also found that the present petitioner is a history sheeter and was convicted for commission of offences under section 395/397 IPC and 25(1B)(a) Arms Act and served an imprisonment for nine years. He is also an accused in two other cases related to Arms Act, E.A Act and other provisions of Indian Penal Code.

**10.** With regard to the decisions relied upon by the petitioner on the point of framing of charge under Section 226/227 of the Code of Criminal Procedure it is seen that in the case of ***Banti @ Guddu vs State of MP (Supra)*** when the complainant heard the sound of altercation and found Banti and accused assaulting the deceased with knives and with intention to kill on his face, chest, stomach, and thigh, the deceased fell down after crying and become senseless. The accused persons thereafter ran away. The charges were framed under Section 302/34 IPC and the trial commenced. The learned Trial Court found the accused persons guilty and convicted for commission of offence punishment under section 302 of the Indian penal code followed by an appeal which was not interfered, and the Appeal was dismissed. The matter went upto Supreme Court and in this case the Hon'ble Supreme Court observed in paragraph 12 that;

> *"12. In trials before a Court of Sessions, the prosecution shall be "conducted by a public prosecutor". Section 226 of the Code of Criminal Procedure, 1973 enjoins on him to open up his case by describing the charge brought against accused. He has to state what evidence he proposes to adduce for proving the guilt of the accused. If he knew at that stage itself that*

*certain persons cited by the investigating agency as witnesses might not support the prosecution case, he is at liberty to state before the court that fact. Alternatively, he can wait further and obtain direct information about the version which any particular witness might speak in Court. If that version is not in support of the prosecution case, it would be unreasonable to insist on the public prosecutor to examine those persons as witnesses for prosecution."*

In the said case, the observation came with regard to the plea regarding non-examination of certain persons who were stated to be present, which is absolutely different in the instant case when the charge has only been framed by the learned court.

**11**. In the case of ***Sajjan Kumar (Supra)*** the observation made while considering discharge petition/framing of charge filed under section 227 CrPC and under section 228 CrPC and in paragraph 17 discussed the parameters to exercise of jurisdiction under Sections 227 & 228 of Cr.P.C and held;

*"17. Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.*

*On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-*

*(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the*

*evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.*

*ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.*

*iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

*iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

*v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

*vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*

*vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal. In case the charge was printed against the appellant for the office punishable under various sections of Indian penal code including 302 IPC. The honourable Supreme Court after discussing several factors were aware of the view that it cannot be concluded that framing of charge by the trial is either bad in law or abuse of the process of law or without any material. Moreover no application for discharge has been filed in the instant case."*

**12.** In the case of ***Manishaben Gajjugiri Goswami (supra)*** after considering various decisions , the Hon'ble Supreme Court was the view that it is clear that Sessions Court has to begin with the opening of the case by the prosecution and then followed by argument on behalf of prosecution accused culminating in passing order provided under section 227 or 228 of the Cr.P.C either to discharge or to pass order of framing charge. In the said

case, the matter filed challenging the order of framing of charge. The main grievance of the applicant was that the learned session judge framed the charge without hearing the accused and there is apparent non-compliance of provision of section 226& 227 of Cr.P.C which transpires that the appellant made a written request to the learned Sessions Judge to comply with the provisions of Section 226 of Cr.P.C. so that the appellant can avail provision of section 227 of Cr.P.C. to file discharge application. It was observed by taking a note of the decision of the Hon'ble Supreme Court in ***Amit Kapoor versus Ramesh Chander and another***[8] that-

> "*17. Framing of a Charge is an exercise of jurisdiction by the trial court in terms of section 228 of the Code, unless the accused is discharged under section 227 of the Code. Under both the provisions, the Court is required to consider the "record of the case" and document submitted therewith and, after hearing the parties, may either discharge the accused or where it appears in its opinion there is ground for presuming that accused has committed an offence, the charge shall be framed . The satisfaction of the court is regarding existence of constituent of an offence and the facts leading to the offence is a sine qua non for exercise of such jurisdiction. It was also observed that section 227 is the expression of a definite opinion and judgement of the court while section 228 is tentative. To say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is permissible in terms of section 228 of the Code."*

[8] (2012) 9 SCC 460

**13.** On perusal of the judgement, also, it appears that in the order impugned, there was no whisper that Learned Sessions Judge evaluated and examined chargesheet papers or he looked into charge sheet papers and without opening the case by the prosecution decided to frame the charge under Section 228 of Cr.P.C depriving the applicant from her valuable right under the provision of CrP.C. The learned Judge after evaluating all the facts and circumstances and the laws laid down ,was of the view that if direction was given to the learned Sessions Judge to hear application or to set aside the order of framing charge will not serve the purpose as it may consume further time and end result would be to quash order of framing charge, which may lead to further multiplicity of litigation. Therefore, to avoid such an expeditious hearing of sessions case involving serious offence, the Court decided to set aside the order impugned and quashed the order with a direction to the concerned court to direct the learned special public prosecutor to open the case as provided under section 226 of Cr.P.C and then to follow further procedure prescribed in section 226 to 228 Cr.PC after hearing both the sides in accordance with law.

In the present case, it appears that the learned Court in presence of both the Learned Advocates after considering the materials and record and the case diary framed the charge against the accused persons, including the petitioners and no objection was raised on behalf of the petitioner at any point of time. Order was passed on 11.12.2024 and thereafter their present revisional application was filed on 7th January 2025 for setting aside the said order.

**14.** In the case of ***Ashok Shambhubhai (Supra)*** also the revisional application was filed against an order passed by the learned Special Judge where prayer was made seeking direction against the prosecution to open the case in terms of Section 226 of the Cr.P.C. The learned Single Judge concurs with a view of the learned advocate that mere production of draft charge would not suffice and satisfy the object of the provisions of section 226 of the Cr.P.C where it would be necessary for the prosecution to open the case and to state before the court evidences, which the prosecution propose to produce an intention to prove the guilt of the accused. It was reiterated that-

> *"7.1. At ti,mes, it has been noted that prosecution may not examine all the witnesses, who have been cited in the charge sheet by the police. Thus, it becomes necessary for the prosecution to open it before the Court prior to framing of the charge by the Court, the list of the witnesses, to indicate the witnesses to be examined during the trial as well as the documents to be relied upon. Court prior to framing of charge is required to evaluate the materials and documents and record with a view to find out facts, which discloses the existence of all the ingredients constituting the alleged offence. Such procedure is not a mere formality, but is mandatory, and the court is also required to note such proceedings in the Rojnama . Only after following the provision of section 226 of Cr.P.C, the accused may exercise option of moving discharge application under Section 227 of the Cr.PC. If not, the Court can proceed to frame the charge under Section 228 of the Cr.P.C."*

**15.** In the instant case, no such prayer was made before the court, raising any objection regarding framing of charge and the learned court in presence of both the learned advocates considering the materials framed the charge. The petitioner did not file any application for discharge nor any such prayer seeking direction against the prosecution to open the case in terms of Section 226 of Cr.P.C . Therefore, above cases are factually distinguishable from the instant case in hand. The points taken by the learned advocate representing the petitioner that on the basis of a draft charge, the learned court framed such charge do not find any legs to stand upon since no reflection in the order against which this revisional application has been filed that merely on the basis of draft charge the Learned court framed the charge .On behalf of the petitioner also no application raising objection to the same was filed immediately after the said charge was framed specially when the Learned defence Counsel was very much present .

**16.** The judgement of ***Dr. Mani Kumar Chhatri versus state of West Bengal (Supra)*** as relied upon on behalf of the petitioner ,the revisional application was filed against the order passed by the learned Additional Sessions Judge 3rd Court Alipore , rejecting the prayer of the petitioner to discharge him from the said case and framing charges under Section 304, Part II, Section 308 read with section 36 of the Indian Penal Code along with other various provisions of West Bengal Fire and Emergency Services Act. Such order was under challenge on the ground that it was a non-speaking order and does not deal with all the issues raised by him before the trial court. The learned Single Bench analyses the factual matrix of the case and discussed the

differences of the ingredients punishable under section 304(II), 304A of IPC and observed that-

> *".....mere possibility of knowledge that death is a consequence of an act is inadequate to draw an inference as to the existence of requisite knowledge in the mind of the accused. A degree of certainty in the awareness of the individual as to the likelihood of death as a consequence of his act is a prerequisite for imputation of requisite mens rea in a case of culpable homicide. Knowledge as to likelihood of death must be the direct and motivating force of the act and not a mere possibility arising therefore. Hence, every rash and negligent act causing death would not ipso facto result in an inference as to the existence of knowledge that the ration and negligent act is likely to cause death."*

**17.** The learned Judge quashed the charges framed under Section 304(II)/308 with Section 36 of I.P.C against the petitioner and directed the Trial Court to frame charge against the petitioner under Section 304A/337/338 read with Section 35 and 36 of IPC. The petitioner in that case was one of the director there and was found that there was gross negligence of the petitioner in the matter of supervision of the affairs of the company. Similarly, in the case of ***Yuvraj Laxmilal Kanther (Supra)*** also the appellant sought their discharge under Section 227 Cr.P.C, which was dismissed against which the criminal appeal was preferred before the Supreme Court. The charge was framed under Section 304, Part II, IPC read with section 34 IPC by the learned Trial Court and considering various judicial pronouncements the Appeal was allowed partially. Charges framed against them under Section 304, part II,

324, 326 and 429 IPC was quashed and set aside instead, it was directed that appropriate Trial Court shall frame charges against the accused as indicated in the judgement. In the case of ***Uphaar Cinema tragedy*** **(Supra)** against an order of conviction the observations were made by the Hon'ble Apex Court and in this case only the order framing charge is under challenge .Therefore, in none of the cases as relied upon by the Learned Advocate, the revision application was filed against an order framing charge by the learned Trial Court only but challenged the order, refusing to allow the prayer for discharge filed by the accused persons or against an order of conviction. However the broad principle regarding framing of charge and the required formalities to be complied with at the time of framing of charge is a settled provision of law and is squarely applicable in this case also. In the touchstone of the said settled principle also as discussed above that in the order impugned the Learned Judge did not mechanically framed the charge but duly consulted the material from case Diary in presence of both the prosecution and the Learned Defence counsel.

**18.** Section 227 of Code of Criminal Procedure deal with discharge and reads as follows:-

> *"**227. Discharge**. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."*

It is settled proposition of law that at the stage of passing the order, the Court has to peruse in order to find out whether or not sufficient ground exists to proceed against the accused. If Prima facie case is made out, charge is to be framed in terms of section 228 Cr.P.C . It is also settled that the court did not undertake an elaborate enquiry in considering the materials and also not necessary to delve deep into various aspects.

Section 228 Cr.P.C deals with framing of charge, which is as follows;

> ***"228. Framing of charge.***
>
> *(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -*
>
> *(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;*
>
> *(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.*
>
> *(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

**19.** In ***Rafiq Ahmed (supra)*** as relied upon by the prosecution the Trial Court framed charges under section 396 IPC for committing dacoity and the case was filed after an order of conviction was passed under section 302 IPC. The

appellant was charged with offences under Section 396 and 201 IPC. It was observed by the Hon'ble Supreme Court that fine distinction of law, if discerning, should normally be recognised and permitted to operate in their respective fields. With the development of criminal jurisprudence, the law has recognised the concept of cognate charges besides alternative charges. The differentiation between the offences from the same family in contra distinction to the offences, falling in different categories have persuaded the quotes to apply the principles of 'cognate offences' and punish the offender for a less grave offence because the offence of greater gravity has not been proved beyond reasonable doubt. This principle is to be applied keeping in view of the facts and circumstances of a given case and notwithstanding the fact that no charge for such less grave offence had been framed against the offender. The Apex Court took note of a Constitutional Bench Judgment of ***Willie (Willia) Slaney vs State of MP***[9] where it was held that

> "45. In *adjudging the question of prejudice, the fact and absence of a charge, or a substantial mistake in it, is a serious lacuna will naturally operate to the benefit of the accused and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as elsewhere.; but if, only careful consideration of all the facts, prejudice, or reasonable, and substantial likelihood of it, is not disclosed the conviction must stand; also it will always be material to consider whether objection to the nature*

[9] AIR 1956 SC 116

*of the charge, or a total want of one, was taken at an early stage.*

*If it was not, and particularly where the accused is defended by councel, it may in a given case be proper to conclude that accused was satisfied and knew just what he was being tried for and knew what was being alleged against him and wanted to know further particulars, provided it is always borne in mind that no serious defect in the mood of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused."*

**20.** The Hon'ble Supreme Court examined the meaning of prejudice and in paragraph 34 discussed the principles and examine the meaning of prejudice, which is as follows:

*"34. In light of the above principles, let us now examine the meaning of `prejudice'. The expression has been defined in Black's Law Dictionary (Eighth Edition), as follows:*

*"Prejudice,- 1. Damage or detriment to one's legal rights or claims. See dismissal with prejudice, dismissal without prejudice under DISMISSAL. Legal prejudice.- A condition that, if shown by a party, will usu. defeat the opposing party's action; esp., a condition that, if shown by the defendant, will defeat a plaintiff's motion to dismiss a case without prejudice. The defendant may show that dismissal will deprive the defendant of a substantive property right or preclude the defendant from raising a defense that will be unavailable or endangered in a second suit.*

*Undue prejudice. The harm resulting from a fact-trier's being exposed to evidence that is persuasive but inadmissible (such as evidence of prior criminal conduct) or that so arouses the emotions that calm and logical reasoning is abandoned.*

*2. A preconceived judgment formed without a factual basis; a strong bias"*

**21.** In paragraph 43, the Supreme Court examined the kind of offences may fall in the same category except to the extent of grave or less grave. It was observed that-

> "43.....*we have already noticed that a person charged with heinous or grave offence can be punished for a less grave offence of cognate nature whose essentials are satisfied with the evidence on record. Examples of that kind have already been noticed by us like a charge being framed under Section 302 IPC and the accused being punished under Section 304 Part I or II, as the circumstances and facts of the case may demand. Furthermore, a person who is charged with an offence under Section 326 IPC can be finally convicted for an offence of laser gravity under Section 325 or 323 IPC if the facts of the case so established."*

The cognate offence as described in Black Law Dictionary was considered by the Hon'ble Supreme Court and define the expression which reads as;

*"Cognate offence- A lesser offence that is related to the greater offence because it shares several of the elements of the greater offence and is of the same class or*

*category. For example, shoplifting is a cognitive offence of larceny because both crimes require the element of taking property with the intent to deprive the rightful owner of that property."*

Therefore, Apex Court held that where the offences are cognate offences with commonality in their feature, duly supported by evidence on record, the court can always exercise its power to punish the accused for one or the other offence provided the accuse does not suffer any prejudice. After considering the fact and circumstances of the case held that the applicant has not suffered any prejudice much less a serious prejudice, then the conviction of the applicant under Section 302 IPC cannot be set aside merely for non framing of a specific/alternate charge for an offence punishable under Section 302 IPC. It is more so because the dimensions and facets of an offence under Section 302 are incorporated by the specific language and inbuilt in the offence punishable under Section 396 IPC and dismissed the appeal.

**22.** In this regard, it is pertinent to take note of a recent decision of the 3 Judges Bench of Hon'ble Supreme Court in ***Ghulam Hasan Beigh vs Mohammad Maqbool Magrey & Ors.***[10] where the Trial Court discharged the accused persons of the offence of murder punishable under Section 302 of IPC and proceeded to frame charge against the accused persons for the offence of culpable homicide punishable under Section 304 of the IPC. It was observed in paragraph 30 ,that penal code recognises two kinds of homicides i) homicide, that deals between Section 299 and 304 IPC and ii)

[10] [2022] 13 S.C.R. 34; 2022 INSC 750

non-culpable homicide, which deals with Section 304A IPC. There are two kinds of culpable homicides; a) homicide amounting to murder Section 303 02 IPC and b) homicide not amounting to murder Section 304II IPC. This section provides punishment for culpable homicide not amounting to murder. In paragraph 31 it was held that:-,

> *"31. Whether the case falls under section 302 or 304 Part II IPC would have been decided by the trial court only after the evaluation of the oral evidence that may be led by the prosecution as well as by the defence, if any, comes on record. Ultimately, upon appreciation of the entire evidence on record at the end of the trial, trial court may one view of the other. i;e whether it is a case of murder for case of culpable homicide. But at the stage of framing of the charge, the trial court could not have reached to such a conclusion ,merely relying upon the postmortem report on record. ….'*

In paragraph 32 down, Supreme Court observed that:-

> *"32; we may now proceed to consider the issue on hand from a different angle. It is a settled position of law that in a criminal trial, the prosecution can lead dividend only in accordance with the charge framed by the trial court. Where a higher charge is not framed for which there is evidence, the accused is entitled to assume that he is called upon to defend himself only with regard to the lesser offence for which he has been charged. It is not necessary then for him to meet evidence relating to the offences with which he was not been charged. He is merely to answer the charge as. The code does not require him to make all evidence led by prosecution. He has only to rebut evidence bearing*

*on the charge . The prosecution cases is airily Limited by the charge. It forms the foundation of the trial which starts with it, and the accused can justify concentrate on meeting the subject matter of the charge against him. He did not cross examine witnesses with regard to offences, he is not charged with no need. He gave any evidence in defence in respect of such charges.*

*33. Once the trial court decides to discharge and accused person from the offence punishable under section 302 of the IPC and proceeds to frame the laser charge for the dolphin punishable under Section 304 part-II, the prosecution thereafter would not be in a position to lead any evidence beyond the charge as framed. To put it, otherwise, the prosecution will be thereafter compelled to proceed as if it has now to establish only the case of culpable homicide and not murder. On the other hand, even if the trial court proceeds to frame charge under Section 302 IPC in accordance with the case put up by the prosecution still, it would be open for the accused to persuade the court at the end of the trial that the case falls only within the ambit of culpable homicide punishable under section 304 of IPC. In such circumstances, in the facts of the present case, it would be more prudent to permit the prosecution to lead appropriate evidence. Whatever it is worth in accordance with its original case at put up in the charge-sheet. Such approach of the trial court at times may prove to be more rationale and prudent."*

The Hon'ble Supreme Court allowed the Appeal and set aside the order passed by the learned Trial Court. Direction was given to the Trial Court to proceed

to pass a fresh order framing charge in accordance with keeping in mind the observations made by the Hon'ble Court .

***Conclusions***

**23.** Therefore, in light of the foregoing discussion of the law laid down by the Hon'ble Supreme Court as well as various High Courts with regard to the framing of charges in respect of commission of offence against an accused person and the prejudice likely to be caused to the accused person by reason of non-framing of an appropriate charge, this Court proposes to visit to the factual matrix of the present case and of the role attributed to the petitioner in the instant case be revisit once again. It is a specific case of the prosecution that the petitioner was the developer along with the co-promoter and a five storied building was constructed without obtaining any sanctioned plan from competent authority. The charge sheet further contains specific allegation against the present petitioner regarding use of inferior quality of materials. In particular, statements have been recorded indicating that the petitioner instructed the labourers engaged in the construction to mix the ingredients of construction materials disproportionate quantities and to use of inferior qualities materials while raising the columns of the building. More importantly, the petitioner despite possessing no requisite technical qualifications actively involved himself in the construction of the building, which ultimately collapsed, resulting in death 15 persons and injuries to several others. The prosecution has also brought to the fore, the petitioner's alleged criminal antecedents, including antecedent relating to commission of offence of murder. In view of the

statutory provisions and the principles of law discussed hereinabove, this Court is of the considered view that if at this threshold stage, charge is altered and a charge for substantially lesser offence is framed there would hardly remain any scope for the prosecution to proceed effectively with the trial in respect of the gravity of the allegation and the role attributed to the petitioner, even if later found some ingredients against the petitioner for commission of grave offence. On the contrary, the petitioner cannot be said to have suffered any prejudice, since the charge has been framed in respect of an offence carrying the maximum punishment.

**24.** The Court shall, therefore, have the liberty to determine the culpability of the petitioner and the ultimate of the case upon proper appreciation of the evidences to be adduced in course of trial. In such circumstances, this Court does not find any reason to interfere with the impugned order.

**25**. Accordingly, this revisional application stands dismissed.

**26**. No orders as to cost.

**27.** All other connected applications, if any, hereby stand disposed of.

**28.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

**[CHAITALI CHATTERJEE (DAS), J.]**