

**2023 LiveLaw (SC) 742**

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**M.M. SUNDRESH; J., J.B. PARDIWALA; J.**  
AUGUST 28, 2023.

**CRIMINAL APPEAL No.2655 OF 2023 (Arising out of SLP(Crl.)No.7162 of 2023)**

**ARCHANA versus THE STATE OF WEST BENGAL & ANR.**

**Code of Criminal Procedure, 1973; Section 323 - High Court directed the Magistrate to undertake the exercise of committal in pursuant to a decision to be taken as to whether a charge can be added under Section 307 IPC only after the conclusion of the entire evidence of prosecution witness - It is not mandatory for the Magistrate to wait for the completion of the entire evidence of the prosecution witness, which is inclusive of cross-examination - Section 323 Cr.P.C. gives a discretion to the Court to exercise its power at any stage of the proceeding before signing judgment - The power under Section 323 Cr.P.C. may be invoked by the Magistrate at any stage of the proceeding prior to signing of the Judgment - The said power may be invoked even after the deposition or the examination-in-chief of a witness. The key requirement for the invocation of the power under the Section 323 is that the learned Magistrate concerned must feel that the case is one which ought to be tried by the Court of Sessions.**

(Arising out of impugned final judgment and order dated 01-05-2023 in CRR No.307/2023 passed by the High Court at Calcutta)

*For Petitioner(s) Ms. Indira Jai Singh, Sr.Adv. Mr. R Balasubramanian, Sr. Adv. Mr. Praveen Kumar, Adv. Ms. Nur Tandon, Adv. Mr. Kunal Jindia, Adv. Mr. Vinod Singh, Adv. Mr. Abhishek Kumar, Adv. Mr. Sachin Sharma, AOR*

*For Respondent(s) Mr. Anirban Guhathakurta, Adv. Mr. Shambo Nandy, AOR Mr. Kunal Chatterji, AOR Ms. Maitrayee Banerjee, Adv. Mr. Rohit Bansal, Adv. Ms. Kshitij Singh, Adv.*

**ORDER**

1. Leave granted.
2. The short issue involved in the instant appeal is as to whether the approach adopted by the High Court in the impugned order in its revisional jurisdiction on an application under Section 323 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) holding thereby a *prima facie* offence under Section 307 of the Indian Penal Code was premature and consequently setting aside the order of the learned Trial Court and remanding the matter back to the learned Chief Metropolitan Magistrate is correct or not?
3. The case has a chequered history. The matrimonial discord between the parties has reached a different level culminating into a criminal case. The question for consideration, as stated, is with respect to the remittal order passed by the High Court in the impugned order finding fault with the exercise of power by the learned Chief Metropolitan Magistrate (for short, 'CMM') in committing the matter to the jurisdictional Sessions Court after exercising the powers under Section 323 Cr.P.C. in coming to the conclusion that the charge under Section 307 of the Indian Penal Code, 1860 (for short, 'IPC') is required to be heard by way of an additional charge. In such view of the matter, the learned CMM exercised the powers under Section 216 read with 323 Cr.P.C.
4. Heard learned Senior Counsel appearing on behalf of the appellant as well as learned counsel appearing on behalf of the respondents and carefully perused the material placed on record.

5. We find force in the submission made by learned Senior Counsel for the appellant that the procedure adopted by the High Court in the impugned order is not correct. The High Court directed the learned CMM to undertake the exercise of committal in pursuant to a decision to be taken as to whether a charge can be added under Section 307 IPC only after the conclusion of the entire evidence of P.W.1 namely, the appellant before us. For exercising such a power, it is not mandatory for the learned CMM to wait for the completion of the entire evidence of P.W.1, which is inclusive of crossexamination. In other words, such a subjective satisfaction would depend upon the materials available before the Court whatever may be its nature. The procedure adopted by the High Court in the impugned order is not mandated under Section 216 or 323 Cr.P.C. Section 323 Cr.P.C. gives a discretion to the Court to exercise its power at any stage of the proceeding before signing judgment. It is, evident from the statute that the power under Section 323 Cr.P.C. may be invoked by the learned Magistrate at any stage of the proceeding prior to signing of the Judgment. Thus, it is a settled provision of law that the said power may be invoked even after the deposition or the examination-in-chief of a witness. The key requirement for the invocation of the power under the Section 323 is that the learned Magistrate concerned must feel that the case is one which ought to be tried by the Court of Sessions.

6. In such view of the matter, we are inclined to set aside the impugned order passed by the High Court as we find that the learned CMM has correctly exercised his discretion.

7. In view of the above, the impugned order passed by the High Court is set aside and the one passed by the learned CMM is restored.

8. The appeal stands allowed to the extent indicated above.

9. We make it clear that we have not expressed any opinion on the merits of the case and it is open to the Sessions Court to proceed further in the matter.

10. Learned CMM is directed to send the record to the jurisdictional Sessions Court at the earliest.

11. As a sequel to the above, pending interlocutory applications stand disposed of.

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