

Noting by Officer or Advocate	Serial No	Date	Office notes, reports, orders or Proceedings with signature
		<b>25.09.2017</b>	<p style="text-align: center;"><b>BEFORE</b> <b>THE HON'BLE MR. JUSTICE S. TALAPATRA</b></p> <p>Heard Mr. R. Saha, learned counsel appearing for the petitioner as well as well Mr. S. Sarkar, learned P.P. appearing for the State.</p> <p>This is a petition filed under Section 497 read with Section 401 of the Cr.P.C. against the order dated 03.08.2017 delivered in case No. S.T.39(GT/U) of 2016 by the Sessions Judge, Gomati, Udaipur, Tripura.</p> <p>The grievance as canvassed in this petition is wholly against the framing of charge under Section 307 of the IPC. At the time of discussion of charge the petitioner raised the same issue that no charge based on the materials available in the police papers can be framed under Section 307 of the IPC. While discarding such objection, the Sessions Judge, Gomati, Tripura by the order dated 03.08.2017 has observed as under:</p> <p style="padding-left: 40px;"><b>"Gone through the record and found that in the statement recorded under Section 164, Cr.P.C. the victim stated that her father-in-law pressed her mouth when she intended to divulge the fact of embracing her by her father-in-law to her mother-in-law. Thus, from said statement prima-facie it cannot be presumed that the father-in-law pressed her with a pillow having an intention to kill her. But in her statement recorded under Section 161 Cr.P.C. she specifically stated that her husband pressed her mouth with pillow with an intention to kill her. Though the victim herself is contradicting on that point in respect of her statements recorded under Section 161 CR.P.C. and also under Section 164 Cr.P.C. but is not the proper stage to decide the merit of the case on pros and cons."</b></p> <p>It has been further observed that only on the face of the records, if it can be presumed from the materials that the petitioner had participated in the commission of the offence, the charge should be framed inasmuch as the framing of charge does not carry any presumption on veracity of the statement as utilised by the court.</p> <p>Accordingly, the said objection has been discarded and hence, this revision petition.</p>

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			<p>Mr. Saha, learned counsel appearing for the petitioners has strenuously argued and submitted that when the victim herself has made varying statements in two different point of times, one under Section 161 of the Cr.P.C. and another under Section 164 of the Cr.P.C., the court should not have even presumed existence of materials for framing of the charge under Section 307 of the IPC as there is no other elements in the records to frame the charge under Section 307 of the IPC.</p> <p>Mr. Sarkar, learned PP appearing for the State, while repelling the said submission has submitted that the requirement under Section 228 of the Cr.P.C. is barely to have material to presume that there may exist the said alleged culpable act. This is not the stage where the materials have to be scanned in such a meticulous form to reach at an inference concretely. These are just surfaced from the materials, based on which the charges are framed. The materials which are considered when the charge is framed are the materials which may form the evidence or in some cases those may not form the evidence. Therefore, these are not mere allegations. These are the materials of the prosecution after the investigation. Those are unproved materials laid in the police papers. Mr. Sarkar, learned PP has further submitted that the apparent contradiction as pointed out by Mr. Saha, learned counsel if can be proved by the defence would definitely striker at the root of the prosecution's attempt to show that there was intention to kill. But this is not the stage when such ground can be entertained by this court. He has defended the framing of the charge. According to him, the said charge can very well be framed on the basis of the materials those are available on the police papers. Section 228 of the Cr.P.C. has clearly provided that "<i>if there is ground of</i></p>

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			<p><i>presuming that the accused committed an offence, then the charge shall be framed.”</i> In <b>State vs. N. Muniswami</b>, reported in <b>(1977) 2 SCC 699</b>, the apex court has observed as under:</p> <p><b>“that at the stage of framing the charge, the court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person’s liberty substantially, need for proper consideration of material warranting such order as emphasized.”</b></p> <p>In <b>State vs. Somnath</b>, reported in <b>(1996) 4 SCC 659</b>, the apex court had occasion to observe as under:</p> <p><b>“.....if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”</b></p> <p>Thus, what the apex court had observed in <b>State vs. Mohanlal</b>, reported in <b>(2000) 6 SCC 338</b> perhaps crystallises the judicial view. In <b>Mohanlal</b> (supra) the apex court has observed as under:</p> <p><b>“The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”</b></p> <p>What Mr. Saha, learned counsel has submitted is to appreciate the probative value of the materials as placed. That cannot be done at this stage. But in sheer absence of any material indicating a probable case of committing offence of attempting murder, then of course the accused is entitled to get discharged from that accusation. Here, there are indicative materials in</p>

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			<p>the statement made by the victim that she was pressed with the pillow on her mouth and as such, this is not a case where this court should hold that the prosecution has failed to place the materials in support of the framing of the charge under Section 307 of the IPC. Intention to commit murder as, it is well settled in criminal jurisprudence, has to be gathered for the circumstances not only from a torn-out statement.</p> <p>Having observed thus, this court does not find any merit in this petition. Accordingly, the same is dismissed.</p> <p>Mr. Saha, learned counsel appearing for the petitioner had produced the injury report. This court has perused the report, but however it does not help the petitioner in any manner and accordingly, it is returned.</p> <p><b>JUDGE</b></p>