

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. 3356/2010

% Judgment decided on: 23rd February, 2011

ROMESH SHARMA

.....PETITIONER

Through: Mr. Ramesh Gupta, Sr. Adv.
with Mr. Jaswinder S. Nischal
and Mr. Sumit Arora, Advs.

Versus

CENTRAL BUREAU OF INVESTIGATION
(CBI)

....RESPONDENT

Through: Ms. Sonia Mathur, Adv. for the
respondent along with IO Anil
Kumar, CBI.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. By way of present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) petitioner (accused) has prayed that the order dated 4th September, 2010 passed by the Trial Court, whereby application under Section 216 Cr.P.C. of the petitioner for modification/amendment of the charges has been dismissed, be set aside.

2. Initially, FIR No. 799/98 was registered at Police Station Hauz Khas on the complaint of one Shri H. Suresh Rao (hereinafter referred to as “complainant”). Subsequently, investigation was transferred to the Central Bureau of Investigation (CBI) and a case bearing no. RC 1(S) 98/STF/CBI under Section 120-B read with Sections 323/365/386/392/395/412/420 and 506 IPC was registered. In nutshell, complainant alleged in the FIR that he was owner of a helicopter bearing no. VT-EAP Model No. BELL-47, GS. He had given this helicopter to the petitioner on hire. Subsequently, petitioner, by exercising undue influence, pressure and coercion, made the complainant sign a Memorandum of Understanding (MOU) dated 14th May, 1996 and certain other documents regarding transfer of the said helicopter in his favour. Later on, when complainant sent his employees to take back the helicopter, they were threatened with dire consequences. Threats were also extended to the complainant through goons.

3. After conclusion of the investigation, CBI filed charge sheet before the Trial Court. On 19th December, 2000 charges under Section 120-B read with Sections 323,365,386,392,395,412,420 and 506 IPC were framed against the petitioner to which he pleaded not guilty and claimed trial. Trial is in progress.

4. It appears that in the year 2002 complainant had filed a civil suit bearing number 866/2002 in this Court praying therein that the aforesaid MOU and other related documents of transfer of the said helicopter be cancelled and he be declared owner of the

helicopter. Decree for mandatory injunction thereby directing the petitioner to transfer the helicopter in the name of the complainant was also prayed for. However, the said suit has been dismissed on 11th January, 2008 on account of failure on the part of complainant to lead evidence despite opportunities granted to him. The operative portion of the order passed by a Single Judge of this Court in the said suit reads as under:-

“.....the plaintiff has neither filed any evidence nor deposited the previous cost despite last and final opportunity given to him vide order passed on 10.12.2007, under the circumstances, the present suit is dismissed for want of evidence, leaving the parties to bear their own costs.....”

5. In view of the dismissal of the suit, petitioner filed an application under Section 216 Cr.P.C. before the Trial Court for modification/amendment of the charges framed against him. It was alleged that in view of the dismissal of civil suit the claim of complainant that he was the owner of helicopter stood falsified. In view of the documents executed by the complainant petitioner was the owner of the said helicopter. Thus, it was prayed that charges framed vide order dated 19th December, 2000 be reviewed and altered in accordance with law.

6. It is this application which has been dismissed by the Trial Court by the order impugned in this petition.

7. Trial Court has held that charges can be altered or added by the court in exercise of its power under Section 216 Cr.P.C. only if there is evidence on record to support the addition or alteration of the charge. Civil suit was not dismissed on merits. No findings on merits had been noticed. Thus, dismissal of the civil suit cannot be

made a ground for alteration of the charges framed against the petitioner. Charges can be altered or modified on the basis of evidence led in the criminal court where trial is pending. Dismissal of the civil suit cannot be made a ground for alteration of charges framed against the petitioner, based on the material produced by the CBI, which was not a party to the civil suit.

8. Learned senior counsel has vehemently contended that in view of the dismissal of suit the plea taken by complainant that he was owner of the helicopter falls flat. Complainant had failed to lead evidence in the suit which itself shows that he had no evidence to support his claim in the suit that he was owner of the helicopter or that petitioner had got signed the MOU from him by exercising undue influence, pressure or coercion. Complainant having abandoned his right in the suit cannot be permitted to lead evidence to the contrary before Trial Court. Petitioner was owner of the helicopter, thus, charges framed against the petitioner under Section 120-B read with Sections 323,365,386,392,395,412,420 and 506 IPC warrant modification.

9. In nutshell, contention of the petitioner is that charges under sections 386/392/395/412/420 IPC are not made out against the petitioner in view of the dismissal of civil suit. In effect, petitioner seeks deletion of charges framed under the aforesaid provisions.

10. Section 216 of Code of Criminal Procedure reads as under:-

“216. Court may alter charge:

1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read

and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court to prejudice the accused in his defence or the prosecutor in the conduct of the case the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

11. A bare perusal of the above provision makes it abundantly clear that charges framed by a court can be altered besides addition to any charge in case sufficient material is available on record warranting such an action. There is no reference to the deletion of any charge already framed. Deletion of charge altogether is not permissible under Section 216 Cr.P.C. A charge once framed must lead to either acquittal or conviction at the conclusion of trial.

12. In ***Vergheese Stephen Vs. Central Bureau of Investigation*** **2007 CrL LJ 4180**, a Single Judge of this court has held as under:-

“It is abundantly clear that the above provision only speaks of alteration of or addition to any charge. There is no reference to the deletion of any charge. In the present case, the petitioner was charged substantively for the offence under Section 420 IPC and for conspiracy under Section 120-B IPC read with Section 420 IPC and 13(2) read with

Section 13(1)(d) of the Prevention of Corruption Act, 1988. What the petitioner is seeking is that the charge of conspiracy pertaining to Section 120-B IPC be deleted altogether. Although the petitioner has styled this prayer as a withdrawal of the charge so as to include it within the ambit of the decision of the Allahabad High Court in the case of Dwarka Lal (supra), however, I find myself unable to agree with the conclusion of the learned Judge in that case. On the contrary, I find that in a subsequent decision of the Allahabad High Court itself in the case of Vibhuti Narayan (supra), the said court had clearly held that Section 216 of the Code did not provide for deletion of a charge and that the word "delete" had intentionally not been used by the Legislature. I am in agreement with this conclusion. The petitioner is seeking the deletion of the charge of conspiracy altogether. That is not permissible under Section 216 of the Code. A charge once framed must lead to either acquittal or conviction at the conclusion of the trial. Section 216 of the Code does not permit deletion of the same. If the petitioner felt aggrieved, he could have filed a revision petition against the order on charge and the framing of the charge. He, however, chose not to do so".

13. If the matter is looked from another angle then also impugned order does not warrant any interference. Civil suit of the complainant had not been dismissed by rendering a categorical finding after parties had lead evidence, that complainant was not the owner of helicopter. No such finding has been returned that complainant had transferred the helicopter in favour of petitioner by executing MOU and other documents. It is also not the case that petitioner had withdrawn the said suit or had abandoned the same. Complainant had been participating in the proceeding of civil suit. Since he had failed to produce evidence despite opportunities, inasmuch as, defaulted in making payment of cost, the suit had been dismissed. That, by itself, would not mean that right of the

CBI to lead evidence in this regard during the criminal trial also stands foreclosed. During the investigation CBI has collected material to substantiate the charges which can be proved by it by leading evidence in this regard in the criminal trial irrespective of dismissal of the suit of complainant on technical grounds.

14. Petitioner has placed reliance on ***Hasanbhai Valibhai Qureshi vs. State of Gujarat AIR 2004 SC 2078*** in support of his contention that charges can be altered at any stage. In my view, this judgment does not advance case of petitioner any further being in the context of different facts.

15. For the foregoing reasons I do not find any perversity in the impugned order which may require interference of this Court in exercise of its inherent jurisdiction under Section 482 Cr.P.C.

16. Petition is dismissed being devoid of merits.

Crl. M.A. No. 16634/2010 (Stay)

Disposed of as infructuous.

A.K. PATHAK, J.

February 23, 2011

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