

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: March 14, 2013

Pronounced on: April 02, 2013

+ **CRL.REV.P.710/2007**

OM PRAKASH ALIAS OMEY & ANR. Petitioners

Through: Mr. Rajeev Mehra and Ms.
Shama Chaudhary, Advocates

Versus

STATE Respondent

Through: Mr. Sunil Sharma, Additional
Public Prosecutor

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Petitioners having faced trial in FIR No.63/2000 under Sections 365/304/279/201/34 of *IPC* registered at P.S. Dabri, Delhi, stand convicted by the trial court for the offence under Section 187 of the *Motor Vehicle Act, 1988* and have been awarded imprisonment for three months each with fine of ₹5,000/- each, which is assailed in this revision petition on the ground that at the final stage of trial, additional charge for the offence under *Motor Vehicle Act, 1988* was framed against petitioners and without affording opportunity to defend themselves, they have been convicted for the offence under *Motor Vehicle Act* by simply observing that petitioners suffer no prejudice on account of framing of the additional charge.

2. The factual background of this case as noted in the impugned judgment of 31st August, 2007 is as under: -

"Prosecution version in brief is that complainant Raj Kumar (PW5) works in village Dabri and his nephew (BHANJA) namely Dhananjay (deceased) aged 18 years also resides with him. On 22.1.2000 at about 8:30 pm Dhananjay was standing near a beetal shop of Dalip Singh (PW3). A DTC Bus No.DEP-9907 at route no.761 came from the side of Mangla Puri and struck against Dhananjay. This bus was stopped and accused persons took this boy in this bus and the bus was driven away. It is alleged that this bus was being driven by Om Prakash and accused Harkesh was conductor on this bus. PW5 Raj Kumar came to know about this incident at about 10:00 pm from PW3 Dalip, who told him that the driver and conductor of the bus have taken Dhananjay to hospital. Raj Kumar kept on tracing Dhananjay in various hospitals the entire night but in vain. Next day i.e. 23.1.2000, in the morning Raj Kumar made inquiry from the control room of DTC and came to know that Bus No.DEP-9907 belongs to Wazir Pur Depot-II and he was informed the names and addresses of bus driver and conductor. He was also informed that both the accused persons did not join the duty till 3:30 pm on 23.1.2000. Accordingly PW5 Raj Kumar came to police station Dabri and on his statement Ex.PW5/A SI Naresh Kumar wrote a rukka Ex.PW10/A. The FIR Ex.PW4/B was registered upon it."

3. At the hearing, it was vehemently urged by learned counsel for petitioners that there can be no conviction for the additional charge

framed at the fag end of trial without affording an opportunity to accused persons to defend themselves. To assert so, reliance was placed upon decisions in *Harihar Chakravarty v. The State of West Bengal* AIR 1954 S.C. 266; *Kantilal Chandulal Mehta v. State of Maharashtra and Another* AIR 1970 SC 359; *Thakur Shah v. Emperor* A.I.R. (30) 1943 Privy Council 192 and *State of Maharashtra v. Ramdas Shankar Kurlekar and another* 1999 CRI. L.J. 196.

4. On the strength of afore-cited decisions, it was vehemently urged by learned counsel for petitioners that power to alter or amend the charge does not include framing of a new charge and that too, at the end of trial and so, the impugned order is patently illegal and deserves to be set aside.

5. Learned Additional Public Prosecutor for the respondent-State had staunchly supported the impugned order and had submitted that mere omission or defect in framing of charge cannot result in acquittal because petitioners-accused had opportunity to defend themselves in respect of the additional charge framed, but their stand was of mere denial and so, petitioners have suffered no prejudice and the impugned judgment deserves to be upheld.

6. Submissions advanced by both the sides have been duly considered, and evidence on record as well as the decisions cited have been perused and thereafter, it emerges that the true test is one of prejudice. Whether accused suffers any prejudice or not, on account of framing of additional charge is the basic question which needs to be considered in the light of stand taken by petitioners-accused in their statement under Section 313 of *Cr.P.C.*.

7. The additional charge framed against petitioners reads as under: -

"I, Vinod Kumar, Addl. Sessions Judge, New Delhi do hereby charge you Om Parkash and Harkesh Chand as under: -

That on 22.1.2000 at 8.30 P.M.at Dabri Village, Palam, you Om Parkash being the driver of DTC No.DEF 9907 and you Harkesh being the conductor of the said bus, and thereby both of you being the incharge of the said bus did not take Dhananjay, who was injured by an accident from this bus, to nearest Hospital, although it was your duty U/s. 134 of Motor Vehicle Act and thereby you committed Offence U/s. 187 Motor Vehicle Act within my cognizance.

I hereby direct that you be tried for the said offence. "

8. The relevant portion of petitioners' statement under Section 313 of Cr.P.C. in respect of the additional charge framed is reproduced as under:

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"Q. It is further in evidence against you that instead of getting the injured admitted in the hospital you alongwith your co-accused threw the injured or his dead body near Marble Market, Mangol Puri. What have you to say?

Ans. It is incorrect.

Q. Will you lead defence?..

Ans. No.

Q. Do you want to say anything else?

Ans. I have been falsely implicated in this case, with due deliberation with by the IO being made false witnesses. I am innocent. Our bus was not involved in this case. All the papers have been manipulated and have been prepared in the Police Station. I was on route No.761 and did not pass the place of occurrence."

9. The finding returned in the impugned judgment on the additional charge framed against petitioners is as under: -

"It is pertinent to note that as per Section 134(a) Motor Vehicle Act 1988 it is the duty of the driver or the incharge of a motor vehicle that he shall convey the injured to nearest medical practitioner or hospital. Accused Om Prakash is the driver of the said bus and accused Harkesh being the conductor was also the incharge of the said bus. Instead of taking the injured to nearest hospital, accused Om Prakash the driver of the bus and accused Harkesh the conductor of the bus took him somewhere else and left him unattended in the area of Mangol Puri. Accused persons have asked that this charge was not framed initially. However I have framed an additional charge and I have explained the accusations to the accused persons to which they have pleaded not guilty. This framing of charge does not prejudice the defence of the accused in any manner because the allegations of not taking the injured to the hospital have been made on oath by the witnesses, who were duly cross examined by the accused. Therefore, even if the conviction is placed under Section 187 Motor Vehicle Act 1988, which makes the section 134 Motor Vehicle Acts punishable for imprisonment upto three months

or with fine which may extend upto Rs.5000/- or with both, would not prejudice the accused persons in any manner. I therefore convict both the accused persons under Section 187 Motor Vehicle Act.

10. On the aforesaid aspect, Apex Court in *Mohan Singh v. State of Bihar*, AIR 2011 SC 3534 has reiterated the scope and ambit of Sections 221 and 464 of Cr. P.C. in these words: -

" In Annareddy Sambasiva Reddy and others v. State of Andhra Pradesh reported in (2009) 12 SCC 546 this court again had occasion to deal with the same question and referred to Section 464 of Cr.P.C. In paragraph 55 at page 567 of the report, this Court came to the conclusion that if the ingredients of the section charged with are obvious and implicit, conviction under such head can be sustained irrespective of the fact whether the said section has been mentioned or not in the charge. The basic question is one of prejudice."

11. In light of the afore-noted factual and legal position, this Court is of the considered view that there is no bar to framing of an additional charge at any stage of trial, but an accused must have an opportunity to meet the charge and defend. In the instant case, petitioners-accused were well aware that the prosecution witnesses had deposed about accused persons not taking the injured to hospital and after recording of the evidence, they were questioned in this regard, but they had no answer except bald denial and pertinently no evidence was led by petitioners-

accused and so, they cannot legitimately claim to have suffered any prejudice on this account. Otherwise also, it is a solemn duty of every citizen to take the injured to the hospital and so, petitioners-accused cannot even claim to be ignorant about the mandate of Section 134 of the *Motor Vehicle Act*, 1988 which requires that the injured has to be promptly taken to the nearest hospital. It would be relevant to note here that petitioners-accused have already undergone the substantive sentence imposed and have paid the fine also.

12. Finding no illegality or infirmity in the impugned order, I dismiss this revision petition.

13. This petition is accordingly disposed of.

(SUNIL GAUR)
Judge

APRIL 02, 2013

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