

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.202 of 2015

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ORDER:

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The present revision is filed under Sections 397 and 401 Cr.P.C. questioning the framing of charge against the petitioner/accused No.4 for an offence punishable under Section 109 IPC in S.C.No.172 of 2012 on the file of the IV Additional District and Sessions Judge, Kurnool.

The case of the prosecution is as under:

Initially a case in Crime No.44 of 2010 of K.Nagalapuram Police Station was registered against the petitioner and others for the offences punishable under Sections 147, 148, 302, 324 and 307 read with 149 IPC. The police investigated into the matter and filed a charge sheet for the above mentioned offences. After committal the same came to be numbered as S.C.No.172 of 2012.

The averments in the charge sheet are that the informant is younger brother of the deceased and eye witness to the occurrence. LWs.2 and 3 are nephews and LWs.4 and 5 are sons of the deceased. LWs.1 to 3 are eye witnesses to the occurrence. During the year 2004 the deceased along with his sons beat accused No.4 over a debt issue. During Sarpanch elections, ill feelings cropped up between two families, as the accused supported CPM party and worked against the candidature of one K.Laxmi Devi, who is the daughter-in-law of the elder brother of the deceased. While things stood thus, on 08.08.2010 at about 8.00 p.m. accused Nos.2 to 9 along with Kasapuram Laxmanna are alleged to have created nuisance near the house of LW.6 after consuming liquor. When LWs.6 and 7 questioned them, a quarrel ensued between them. When LWs.1 along with deceased went there, accused Nos.2 to 9 threatened the informant and deceased. On that LW.6 directed his wife LW.8 and LW.10 to go to the police station and

report the matter. On the same day i.e. 08.08.2010 at about 10.00 p.m. accused Nos.1 to 9 formed themselves into an un-lawful assembly, armed with deadly weapons went to the house of LW.1 and called him out saying "Randira Ippudu Choosukundamu". When LW.1 came out of the house, accused Nos.5 and 6 attacked him with a hunting sickle and a iron rod, and beat him over the head. When he raised cries, the deceased rushed to the spot and intervened to save LW.1. Then accused Nos.1 to 3 alleged to have attacked him with iron rods and hunting sickles causing bleeding injuries over his head, at the instigation of accused No.4. When LW.1 tried to intervene, he was also beaten by accused No.4 with iron rod on his left hand thumb. When, LWs.2 and 3 tried to intervene, they were also beaten by accused Nos.7 and 8 with iron rods causing injuries over their body. All the injured and the deceased were shifted to Government Hospital, Kurnool, where the deceased died on 09.08.2010 at 10.00 p.m.

After filing of the charge sheet the same was numbered as P.R.C.No.70 of 2011. After committal, the case came to be numbered as S.C.No.172 of 2012 on the file of the IV Additional District and Sessions Judge, Kurnool. Basing on the material placed before the court, the learned IV Additional Sessions Judge framed the following charges.

1. Charge under Section 148 IPC against accused Nos.1 to 9
2. Charge under Section 302 IPC against accused Nos.1 to 3
3. Charge under Section 324 IPC against accused Nos.4 to 6
4. Charge under Section 324 IPC against accused Nos.7 to 9
5. Charge under Section 302 r/w 149 IPC against accused Nos.4 to 9.

Thereafter the trial in the said case has commenced and PWs.1 to 14 were examined. After examination of PWs.1 to 14, the prosecution filed an application for framing of a charge under Section 109 IPC against

accused No.4. After hearing both the sides, the trial Court framed a charge under Section 109 IPC against accused No.4 on 28.01.2015. Challenging the same the present revision is filed.

Learned counsel for the petitioner mainly submits that the allegations made in the charge sheet and 161 Cr.P.C. statements of the witnesses does not warrant framing of charge under Section 109 IPC against the petitioner. According to him, none of the witnesses deposed about the instigation or abetment by accused No.4.

On the other hand, learned Public Prosecutor submits that there is enough material on record to show the act of instigation by accused No.4 to attack the deceased and by oversight a charge was not framed at the initial stage. He however submits that no prejudice would be caused to the petitioner as his presence at the scene of offence is spoken to by all the witnesses and specific charge against him for an offence punishable under Section 324 IPC for causing injuries to Kasapuram Govindu and also under Section 302 read with 149 IPC along with other accused is already framed.

The averments in the charge sheet clearly disclose that on the instigation of accused No.4, accused Nos.1 to 3 attacked the deceased with iron rods and hunting sickles. The statement of one Kurva China Venkataiah, who was shown as LW.1 in the list of witnesses appended to the charge sheet, clearly states that when he intervened accused No.4 instigated others saying "Champankira" (kill them) and so saying he is alleged to have hit him with iron rod on the left hand. Apart from that LW.1 clearly stated in his statement that the petitioner instigated others to beat the deceased. The said fact was also spoken to by him in the evidence. All the material witnesses examined by the prosecution in Court refer to accused No.4 instigating the other accused to attack the deceased. It may be true that some of the witnesses did not mention about it in their earlier statements, but that by itself does not preclude the Court from framing a charge if there is enough material at the time of

framing the charge for the said offence. Infact, a specific role has been attributed to the petitioner with regard to attack on LW.1 for which a charge under Section 324 IPC was framed. Similarly the court also framed a charge against him along with other accused for an offences punishable under Sections 302 read with 149 IPC. The improvement made by some of the witnesses is matter for appreciation at the time of trial and that by itself cannot be a ground to quash the framing of a charge under Section 109 IPC. Further, no prejudice is caused to the accused as the trial Court has already framed charges under Section 302 read with 149 IPC and 324 IPC against the petitioner, which establish his presence and participation in the incident. The only thing which the Court has to look into at the time of framing of charge is whether there is any *prima facie* material against the accused. The statements of LWs.5 and 1 clearly disclose the instigation by the petitioner which lead to attack on the deceased.

The learned counsel for the petitioner mainly submits that the Court below erred in framing a charge after examination of 14 witnesses. Section 216 Cr.P.C. gives ample power to the Court to alter or add any charge at any point of time before the judgment is pronounced. Therefore, the argument of the learned counsel for the petitioner that the Court has no power to frame an additional charge after commencement of trial and more so after examination of 14 witnesses cannot be accepted.

In view of the above, I see no reason to interfere with the order passed by the Court below.

Accordingly, the Criminal Revision Case is dismissed, making it clear that any observations made in the order are only for the purpose of deciding the case on hand and the same shall not influence the trial Court during the course of trial.

Miscellaneous petitions, if any, shall stands closed.

JUSTICE C. PRAVEEN KUMAR

23.02.2015
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