

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-2239 of 2015
Date of Decision: 21.01.2015.**

Tejender @ Kalu and anotherPetitioners

Vs.

State of Haryana and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Pardeep Solath, Advocate
for the petitioners.

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SABINA, J.

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the order dated 30.9.2014 (Annexure P-9) whereby charge was ordered to be amended against them.

I have heard the learned counsel for the petitioners and have gone through the record available on the file carefully.

Case of the prosecution, in brief, is that on 11.7.2010, at about 4.00 P.M., complainant Rajesh aged about 17 years, was standing on the road in his village. Petitioner Kalu came there on his motor cycle. On enquiry, complainant told the petitioner that he had to go to Badshahpur. Complainant sat on the motor cycle driven by petitioner Kalu. After travelling for some distance, petitioner Kalu took the motor cycle towards the village temple on the plea that he had to do some work and then they would go to Badshahpur. Petitioner Kalu asked the

complainant to accompany him to the temple. When the complainant refused, petitioner Kalu dragged the complainant forcibly to a room in the temple. Ram Rattan Dass, who was a Baba Ji in the temple, was present there. Baba Ji held the hands of the complainant and petitioner Kalu tied the hands of the complainant with a rope. Thereafter, they removed the clothes of the complainant and Kalu inserted red chilly in his anus with a stick. When complainant raised alarm, Kalu and Ram Rattan Dass threatened him with dire consequences. Both gave beatings to the complainant. Thereafter, petitioner Kalu removed his clothes and tried to commit an immoral act with the complainant. Then they both went out of the room. Complainant untied his hands and ran to his house by wearing his underwear. Complainant narrated the occurrence to his mother and was taken to the hospital for treatment. However, on the way, petitioners threatened them with dire consequences in case they told the incident to any person. After completion of investigation and necessary formalities, challan was presented against the petitioners.

Charges were framed against the petitioners under Section 323, 342, 506/34 of the Indian Penal Code, 1860 ('IPC' for short) on 16.2.2011.

During trial, application was moved by the prosecution for amendment of the charge and it was prayed that charge under Section 377 read with Section 511 IPC be also framed against the accused. Trial Court dismissed the application vide order dated 28.7.2014 (Annexure P-8). The Court of Revision in a revision filed by the complainant held that

charge under Section 377/511 IPC was liable to be framed against the accused vide order dated 30.9.2014 (Annexure P-9).

Para 11 of the impugned order dated 30.9.2014 (Annexure P-9) reads as under:-

“It is come in the evidence of the complainant as well as in his complaint that the accused removed the clothes of the complainant. After beating and putting the red chillies in his anus by wooden stick, accused Kalu also removed his own clothes and tried to commit bad act (Galat Kaam) with him. The complainant injured appeared in the witness box and has stated on similar lines. The accused have also cross-examined the complainant in this regard. The perusal of the MLR would show the injuries on his body and anus. It is settled preposition of law that the court has jurisdiction to alter or add any charge at any point, at any time before the judgment is pronounced.

At this stage, the facts of the case are to be appreciated in the light of framing of charge and not to look into whether it will ultimately lead to conviction under Section 377/511 of IPC or not. Prima-facie, the statement of the complainant that accused tried to commit bad act (Galat Kaam) with him is sufficient to frame charge under Section 377/511 of IPC. The requirement of description of mode and conduct is not required at this stage.”

The reasons given by the Court of Revision while ordering that charge under Section 377/511 IPC was liable to be

framed against the accused, are sound reasons. There was *prima facie* sufficient material on record to frame charge against the accused under Section 377/511 IPC.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

January 21, 2015
Gurpreet