

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

Crl. Misc. No.M-23361 of 2015

Date of Decision: 03.11.2015

Chaman Lal

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Vikas Kumar, Advocate
for the petitioner.

DAYA CHAUDHARY, J. (ORAL)

This petition has been filed under Section 482 Cr.P.C for setting aside the order dated 12.11.2014 (Annexure P-1) passed by the Judicial Magistrate, Ist Class, Faridabad, whereby, the application of the petitioner for framing additional charge under Section 452 IPC against respondents No.2 to 9 has been dismissed as well as order passed by the Revisional Court.

Learned counsel for the petitioner submits that the application moved by the petitioner has wrongly been dismissed, whereas, there is sufficient evidence collected by the Investigating Agency, which has been affirmed by the highest authority and then only the charge was framed. The application has been dismissed without taking into consideration the evidence collected by recording the statements of prosecution witnesses.

Learned counsel for the petitioner has relied upon the judgment of Hon'ble the Apex Court in case ***Hasanbhai Valibhai Qureshi vs State of Gujarat and others 2004(2) RCR (Criminal) 463*** in support of his arguments.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order passed by both the Courts below.

It has clearly been mentioned in the impugned order passed by the Additional Sessions Judge, Faridabad that it is for the trial Court to arrive at a conclusion after taking into consideration the entire evidence of the prosecution led by it. Admittedly, the evidence of the prosecution has not been concluded so far. It cannot be said at this stage that the trial Court has reached to any conclusion that no charge can be framed under Section 452 IPC. It is pre-mature to say anything at this stage as the evidence is still to be recorded. In case, the trial Court comes to the conclusion after considering the evidence of the prosecution that the offence under Section 452 IPC is made out, the trial Court can take note of that and charge can be altered as well.

Section 228 of the Code of Chapter XVII and Section 240 in Chapter XIX deal with framing of the charge during trial before a Court of Sessions and trial of Warrant-cases by Magistrates respectively. There is a scope of alteration of the charge during trial on the basis of materials brought on record. Section 216 of the Code appearing in Chapter XVII clearly stipulates that any court may alter or add to any charge at any time before judgment is pronounced. Whenever such alteration or addition is made the same is to be read out and informed to the accused.

In ***Kantilal Chandulal Mehta v. State of Maharashtra (AIR 1970 SC 359)*** it was held that the Code gives ample power to the Courts to alter or amend a charge whether by the Trial Court or by the Appellate

Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about the charge or in not giving him a full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred against him. Section 217 deals with recall, if necessary of witnesses when the charge is altered.

Therefore, if during trial the trial Court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate.

Accordingly, no interference is required at this stage.

However, it is made clear that in case, the evidence is there before the trial Court that the offence under Section 452 IPC is made out, then the same be considered without being influenced by the order passed by the trial Court or by the Revisional Court.

The petition is disposed of accordingly.

03.11.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE