

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Revision No. 1308 of 2012 (O&M)
Date of decision : 19.11.2015**

Gurbax Singh

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.S Sidhu, Advocate
for the petitioner.

Mr. V.P.S. Sidhu, AAG, Punjab.

ANITA CHAUDHRY, J.

This revision has been filed assailing the order passed by the Sessions Judge, Sangrur who remitted the case back to the trial Court for retrial after amending the charge.

The allegations in brief against the petitioner were that he being the owner of large chunk of land, developed the same into a colony and executed a sale deed of plots in favour of different persons without getting permission from the competent authority as per the Punjab Apartment and Property Regulation Act, 1995 (here-in-after referred to as the Act) and thereby contravened its provisions.

Charge was framed and complete trial was held which ended in acquittal. An appeal was preferred against the judgment dated 06.10.2010. The then Sessions Judge, Sangrur vide its judgment dated 02.04.2012 remitted the matter back to the trial Court with a direction to amend the charges as per the allegations contained in Section 173 Cr.P.C. and to dispose off the case preferably within a period of 6 months.

The counsel for the petitioner contends that the retrial could not be ordered and charge could have been amended by the Sessions Court itself and refers to Section 216 of the Cr.P.C.

Section 216 of Cr.P.C. reads as under:-

Section 216 in The Code Of Criminal Procedure, 1973

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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

The above would show that the charge can be amended at any stage of the proceedings but before the judgment is passed. In this case, the judgment had been passed and it was only when the matter was before the appellate Court that the Court found that the charge had incorrectly been framed.

It would be necessary to refer to para nos.19 & 20 of the order which gives the reason for retrial:-

"19. A perusal of the file reveals that vide order dated 16.08.2005 passed by learned trial Magistrate respondent-accused was ordered to be charged for offences punishable under Sections 36(1) and 36(3) of the Act but while framing charge against the respondent-accused he was charged for an offence punishable under Section 36(1) of the Act only as is evident from the charge framed against the respondent-accused on 29.08.2005.

20. It also needs to be pointed out that respondent-accused was charged for an offence punishable under Section 36(1) of the Act for contravention of provisions of Section 5(1) and 21(1) of the Act. Except for provisions of Section 36 of the Act, he was not charged for any other offence under the Act. A plain reading of Section 36(1) of the Act clearly shows that it provides for punishment only for contravening provisions of Sections 3, 6, 9 or 15 of the Act and this Section does not provide for punishment for contravention of Sections 5(1) or 21(1) of the Act."

The Sessions Judge cannot be said to have exceeded his jurisdiction. The report under Section 173 Cr.P.C. had clearly spelled out the allegations. Charge had been framed incorrectly. The trial Court had framed the charge under Section 36(1) of the Act stating that there was a violation of the contravention of Section 5(1) of the Act. The trial Court had reframed the charge on 04.05.2012 and the trial had begun when the matter was brought before this Court. The proceedings were ultimately stayed in October, 2012 and the trial has not proceeded.

Faced with this situation, the counsel for the petitioner urges that directions may be given to expedite the trial.

Much time has been lost because of the stay by this Court. The Sessions Judge, Sangrur had already passed an order for disposal of the trial within six months and as expeditiously as it could. I find no merit in the petition. The same is dismissed. The trial Court would now commence the trial and expeditiously deal with the same preferably within six months from receipt of the order.

Lower Court record be sent back.

19.11.2015
sunil

(ANITA CHAUDHRY)
JUDGE