

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-8484 of 2015
Date of Decision: 29.09.2016

Parmod Kumar

...Petitioner(s)

Versus

The State of Haryana & another

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

Mr. N.S. Shekhawat, Advocate
for respondent no2.

HARI PAL VERMA, J.

Parmod Kumar - the petitioner has filed the present petition under Section 482 CrPC for quashing of order dated 3.3.2015 passed by learned Sessions Judge, Gurgaon, whereby the revision petition filed by respondent no.2-Sonia Suhag against order dated 5.1.2015 passed by Judicial Magistrate Ist Class, Gurgaon has been allowed and case has been remanded back to the trial Court for disposal in accordance with law.

Vide order dated 5.1.2015, learned Magistrate had allowed the application filed by the petitioner for alteration of charge under Section 216 CrPC by observing that *prima facie*, it appears that the allegations against that respondent-accused under Section 307 IPC are made out, as there is

sufficient material on record to proceed against them under Section 307 IPC and charge should be framed accordingly.

Briefly stated, on the basis of complaint filed by the petitioner, FIR No.7 dated 3.1.2008 under Sections 323/506 IPC was registered at Police Station Civil Lines, Gurgaon against the respondents-accused. Accordingly, charge was framed in the case. While the trial was pending, an application under Section 311 CrPC, for additional evidence, was filed by the petitioner, but the same was dismissed by the trial Court vide order dated 25.4.2013. The revision petition filed against the order dated 25.4.2013 was also dismissed by learned Additional Sessions Judge, Gurgaon vide order dated 1.7.2013. The petitioner challenged the order dated 1.7.2013 by filing CRM-M-21916-2013 before this Court, but the same was also dismissed vide order dated 1.10.2014. The petitioner even challenged the order dated 1.10.2014 passed by this Court before Hon'ble the Apex Court but the same was also dismissed vide order dated 8.12.2014.

After culmination of aforesaid proceedings under Section 311 CrPC, the petitioner has filed another application under Section 216 CrPC before the trial Court, seeking alteration of charge. It was pleaded that the allegations in the FIR and the medical report revealed that the respondents-accused had forcibly administered unknown pill to the petitioner-complainant while causing injuries to him. After framing of charge, it has come on record in the testimony of PW3 Sat Narain, Investigating Officer that Dayanand (since deceased), father of respondent no.2-Sonia Suhag, had forcibly administered unknown pill to the petitioner-complainant and

while he was being nabbed from his neck, respondent no.2-Sonia Suhag forcibly administered water, so that the said pill could be swallowed. The relations between the parties were highly strained and the very motive to administer the pill was to eliminate the petitioner by reducing and minimizing his blood pressure and pulse to such an extent that death would occur. The Medical Officer has proved the medico-legal report of the complainant, which showed that at the time of admission of the petitioner, his blood pressure was unrecordable and the pulse was feeble. Dr. Satender Singh while appearing as PW-4 has categorically deposed in his affidavit Ex.PW4/A that had the complainant not brought to the hospital in time, he would have died. The complainant remained in critical condition. Copy of the application dated 18.12.2014 seeking alteration of charge filed under Section 216 CrPC has been placed on record as Annexure P-1.

The respondent-accused filed reply to the said application, denying the allegations in its totality. It has been pleaded that the allegations levelled in the FIR and medico-legal report that the accused forcibly administered unknown pill to the petitioner-complainant, to cause injuries to him or the statement of PW-3 SI Sat Narain that he had witnessed the accused Dayanand (since deceased) forcibly administering the unknown pill in the mouth of the petitioner-complainant and that he forcibly being nabbed from his neck by the accused or that the said pill was forcibly got swallowed to the petitioner-complainant in order to reduce and minimize the blood pressure as well as the pulse to such an extent that the death would occur, are totally concocted. It has been submitted that the FIR was registered on 3.1.2008 under Sections 323/506 IPC and the

complainant was being represented by his private counsel. Charge was framed on 9.1.2010. PW-1 Rajender Singh, PW-2 Tahir Hussain and PW-3 Sat Narain, IO, were examined on 28.5.2012, 31.5.2012 and 24.7.2012 respectively. The treatment record was produced by Rajesh Sharma on 15.10.2012, whereas the concerned doctor was examined on 28.2.2013 when last opportunity was granted to the prosecution. Ultimately, the prosecution evidence was closed on 28.2.2013. It is, thereafter, the petitioner-complainant has moved an application under Section 311 CrPC for leading additional evidence, but the same was dismissed by the trial Court vide order dated 25.4.2013. The petitioner exhausted the remedies available against the order dated 25.4.2013 upto the Apex Court but could not succeed. It is stated that as per the contents of the FIR, no offence under Section 307 IPC is made out, but the petitioner in order to delay the trial is moving one application after another.

The application filed by the petitioner-complainant under Section 216 CrPC seeking alteration of charge came up for consideration before the trial Court and the same was allowed vide order dated 5.1.2015 to the extent of commission of offence under Section 307 IPC. Accordingly, vide separate order dated 5.1.2015 itself, commitment order was passed.

Feeling aggrieved against the order dated 5.1.2015, respondent no.2-Sonia Suhag had filed a revision petition before learned Sessions Judge, Gurgaon and vide judgment dated 3.3.2015, the revision petition was allowed and the order dated 5.1.2015 was set aside. Learned Sessions

Judge remanded the case to the trial Court for disposal in accordance with law.

It is in the aforesaid circumstances, the petitioner-complainant has filed the present petition impugning the judgment dated 3.3.2015 passed by learned Sessions Judge, Gurgaon.

Learned counsel for the petitioner has argued that the trial Court has passed a well reasoned order on the application filed by the petitioner-complainant under Section 216 CrPC by exercising the powers vested in it, whereby the Court may alter or add to any charge at any time before judgment is pronounced and there is no restriction on the stage at which the charges can be altered. Learned trial Court has taken into consideration the testimony of PW-3 ASI Sat Narayan, who himself had witnessed the occurrence and it was observed that there is no reason to discard his testimony. Affidavit Ex.PW-4A of Dr. Satinder Singh, PW-4, that the patient was immediately shifted to ICU and the undertaking of the father of the patient and brother Pawan Kumar was taken into evidence. Thus, it has come on record that the pill was administered by the respondent-accused, because of which, the condition of the petitioner became critical and had there been any delay in taking him to hospital, he would have died. Therefore, the determinative question is the 'intention' or 'knowledge', as the case may be and not the nature of injuries. For application of Section 307 IPC, it is sufficient that if there is element of 'intention' coupled with some 'overt act' in execution thereof, merely because the injury inflicted by the accused was simple or minor, will not by itself rule out application of Section 307 IPC.

Learned counsel for the petitioner further argued that the treatment chart of the Life Line Health Care hospital shows that the blood pressure of the petitioner had gone down to 40/60. At the stage of framing of charge, only *prima facie* evidence, on the basis of which it may be presumed that there is sufficient material to prove the charge that the accused has committed an offence, is required to be taken into consideration and the learned Magistrate has observed that from the evidence collected on record, it *prima facie* appears that there were allegations against the accused for commission of offence under Section 307 IPC. Thus, there is sufficient material on record to proceed against the respondent-accused under Section 307 IPC. The learned Magistrate has rightly committed the case to the Sessions Court, but while accepting the revision filed by the respondent-accused, learned Sessions Judge has erred in law by setting aside the order dated 5.1.2015. It seems that what has weighed to the mind of learned Sessions Judge is culmination of proceedings in application filed under Section 311 CrPC, but those proceedings have no relevance so far the application filed by the petitioner under Section 216 CrPC is concerned. Proceedings under Section 311 CrPC were independent. The testimony of ASI Sat Narain, Investigating Officer, who witnessed the occurrence cannot be discarded in a casual manner. The trial Court has recorded the statement of PW-4 Dr. Satender Singh, wherein he has stated that “the patient was immediately shifted to ICU and the undertaking of the father of the patient and brother Pawan Kumar were taken. The patient was treated by several Medical Officers and the patient could have died, if delayed”. Learned counsel has further

argued that though learned Sessions Judge has observed that no doubt, the causing of an injury is a necessary ingredient to frame charge under Section 307 IPC, but the intention or knowledge to cause death of the petitioner-complainant is also necessary. Thus, learned Sessions Judge has set aside a well reasoned order passed by the trial Court.

Learned counsel for the petitioner further stated that in view of Section 398 CrPC, this Court may direct the Chief Judicial Magistrate or any other Magistrate to make further enquiry into any complaint which has been dismissed by the Magistrate or into the case of any person, accused of offence who has been discharged.

On the other hand, Mr. N.S. Shekhawat, learned counsel appearing on behalf of respondent no.2 has argued that from a bare perusal of the contents of the FIR, it can safely be concluded that neither there are any allegations attracting an offence under Section 307 IPC nor any statement under Section 161 CrPC of the complainant-petitioner to this extent. PW-4 Dr. Satinder Singh has nowhere stated that there was any injury on the person of the petitioner which was dangerous to life. Even the report of the Chemical Examiner for the State of Haryana clearly mentions that the contents of sample gave negative test for common poison and ethyl alcohol. He further argued that once the petitioner has failed to get any favourable order on his application filed under Section 311 CrPC for leading additional evidence, proceedings of which culminated upto the Apex Court and his claim was rejected, the petitioner has tried to reopen the case by moving an application under Section 216 CrPC seeking alteration of charge. He states that the application under Section 311 CrPC

was dismissed by the trial Court on 25.4.2013 and the petitioner challenged the said order before the revisionary Court, but his revision petition was also dismissed vide order dated 1.7.2013. Thereafter, the petitioner filed CRM-M-21916-2014 against the order dated 1.7.2013 before this Court but the same was also dismissed vide order dated 1.10.2014. The petitioner even challenged the order dated 1.10.2014 before Hon'ble the Apex Court but the same was also dismissed vide order dated 8.12.2014. It is after exhausting his all the remedies under Section 311 CrPC, the petitioner has tried to reopen the case by moving an application under Section 216 CrPC, seeking alteration of charge. It is worth noticing that the Hon'ble Apex Court has dismissed the SLP of the petitioner on 8.12.2014 whereas the present application under Section 216 CrPC, seeking alteration of charge, was filed immediately on 18.12.2014. It shows that the petitioner could not digest the orders passed in proceedings under Section 311 CrPC and therefore, he changed his track to Section 216 CrPC.

Learned counsel for respondent no.2 has further stated that even the medical record, as procured by the petitioner, has been tampered with. The chart maintained by Life Line Health Care hospital in respect of the petitioner shows that on 1.1.2008, when the petitioner was admitted in that hospital, his blood pressure was shown as 40/60, but from naked eyes one can make out that the said record has been tampered with. In fact, the blood pressure was recorded as 110/60. It is difficult to believe that at 4-00 P.M., the blood pressure was recorded as 40/60 and at 4-30 P.M., it has been recorded as 110/70. On account of tampering of record, it is fit case where the petitioner and the concerned hospital should be prosecuted for

tampering with the record. He further stated that there is no illegality in the order passed by learned Sessions Judge and he was well within his powers to pass the order under Section 399 CrPC. Having regard to the order passed by learned Sessions Judge, one can make out that the provisions of Section 398 CrPC, as projected by the petitioner, are not attracted to the facts and circumstances of the present case. The revisionary Court has a duty to enlighten a subordinate Court, if need be. In the present case, by making observations in the order that ingredients of Sections 307 IPC are not fulfilled, learned Sessions Judge has simply enlightened the subordinate Court to proceed in accordance with law. Learned counsel for respondent no.2 has relied upon a judgment of this Court in **Bal Kishan Jain & ors. v. Indian Overseas Bank & ors. 1981 CrLJ 796**, wherein the provisions of Sections 398, 399 and 401(1) CrPC were dealt with.

I have heard learned counsel for the parties and perused the impugned order passed by learned Sessions Judge.

This Court finds that there is no illegality in the order passed by learned Sessions Judge dated 3.3.2015, rather the order passed by the trial Court is mechanical in nature having been passed without giving any deep thought to the facts and circumstances of the case. The FIR No.7 dated 3.1.2008 under Sections 323, 506 IPC was registered against the respondent-accused and vide order dated 9.11.2010, the report of the Chemical Examiner was received and it is on the basis of this report, the respondent-accused was chargesheeted for commission of offence under Sections 323, 506 IPC. No fresh report of the Chemical Examiner has come on record after framing of charge under Sections 323, 506 IPC. The

petitioner was medically treated by different doctors and various tests were carried out, but nothing serious came out. However, in order to bring out the case under Section 307 IPC, the petitioner has moved an application under Section 311 CrPC to lead additional evidence by summoning witnesses. However, the said application was dismissed and revision petition against the said order was also dismissed. Interestingly, this Court has taken note of the facts and circumstances of the case including administering of unknown pill to the petitioner-complainant at the time of passing order dated 1.10.2014 in CRM-M-21916-M-2014 under Section 482 CrPC, wherein the order dated 1.7.2013 passed by the revisionary Court was challenged by the petitioner. However, since no such material was available with the petitioner or the same was not brought to the notice of this Court, the said petition was dismissed vide order dated 1.10.2014. Further, the SLP filed against the order dated 1.10.2014 was also dismissed by Hon'ble the Apex Court vide order dated 8.12.2014. Had the additional evidence so important for just decision of the case, certainly this Court would have allowed the petition filed under Section 482 CrPC, so as to examine the doctor who had medically treated the complainant.

Now, when the petitioner has failed to succeed in the proceedings under Section 311 CrPC, he has tried to adopt a noble idea to reopen the case by moving an application under Section 216 CrPC for alteration of charge. In the case of **Bal Kishan Jain & ors. v. Indian Overseas Bank & ors.** (*supra*), this Court has observed that under Section 399 CrPC, the Court of Session in its revisionary jurisdiction has now been clothed with all or any of the powers which may be exercised by the High

Court under Section 401(1) CrPC. The observations made in the said case read as under:-

“20 Though I have held as above it is equally manifest, as observed earlier, that now the arena of controversy has been virtually effaced by the enactment of the Code of Criminal Procedure 1973 whereby under Section 399, the Court of Session in its revisional jurisdiction has now been clothed with all or any of the powers which may be exercised by the High Court under Section 401 (1). Herein the matter does call for a brief historical perspective. The necessity for having a separate provision like Section 436 in the earlier Code is manifest. Thereunder the Court of Session in its re-visional jurisdiction was primarily a reporting or a recommendatory Court and the basic revisional powers were vested in the High Court alone under Section 439. However, for the limited purpose of meeting the situation where a complaint has been wrongly dismissed as a whole or an accused had been wrongly discharged the Court of Session was given a larger power at par with the High Court, namely, that of directing further enquiry into such cases. This was done by virtue of Section 436 of the old Code. Within this narrow field it was not necessary for the Court of Session to report the matter to the High Court but it could in its own right direct further enquiry in sharp distinction to other cases where it could only recommend to the High Court for necessary action in the latter's revisional jurisdiction. Even though under the new Code the revisional powers of the Court of Session by virtue of Section 399 have been substantially equated with those of the High Court under Section 401(1) a provision in pari materia with Section 436 of the old Code has been retained in the shape of Section 398 of the New Code. Undoubtedly now the revisional powers of the Court of Session under Sections 398 and 399 would in some field overlap each other. It is patent,

however, that the Court of Session is now clothed with the revisional powers contained both in Sections 398 and 399 of the new Code.

21. Herein the significant change that has been brought about by the enactment of the new Code is that whereas earlier apart from directing further enquiry the, Court of Session could only report, the matter to the High Court for appropriate orders under its revisional jurisdiction but now it has been clothed with virtually the same powers which the High Court can exercise under Section 401 (1) of the new Code. This in substance effaces very largely the sharp distinction that existed under the old Code betwixt the revisional powers of the Court of Session and those of the High Court. Now the Court of Session is by and large at par with the High Court in the exercise of the revisional jurisdiction. Consequently the Court of Session also has the same power to direct that an accused person wrongly discharged be summoned, or that a charge be framed against him and he be brought to trial as earlier the High Court undoubtedly could do under Section 439. Once that is so, it obviously becomes academic as to which provision is to be invoked for the exercise of such power. It is well settled by a long line of precedent that the revisional powers under the earlier Code contained in Sections 435 to 439 were to be read and construed together and not in isolated watertight compartments. What was said with regard to those provisions pertaining to the revisional jurisdiction would ring equally true with the corresponding provisions in the new Code. Therefore Sections 398 and 399 of the new Code have inevitably to be read together as one integral whole and both of them indeed supplement and dovetail into each other. Therefore, once a case is before the Court of Session in its revisional jurisdiction then the power under both Sections 398

and 399 can be exercised by it and it is immaterial and academic to investigate as to which specific provision has been actually invoked.”

Therefore, the plea on behalf of the petitioner that in view of Section 398 CrPC, the Sessions Court cannot pass an order like the present one, is not acceptable in the facts and circumstances of the case, as the order dated 5.1.2015 has not been passed under Section 203 or sub-Section 4 of Section 204 CrPC. Moreover, the impugned order dated 3.3.2015 has been passed by the revisionary Court under Section 399 CrPC, whereby the Sessions Judge may exercise all or any of the powers which High Court may exercise under Section 401(1) CrPC. In view of judgment of this Court in **Bal Kishan Jain & ors. v. Indian Overseas Bank & ors.** (*supra*), this Court does not find any illegality in the judgment passed by learned Sessions Judge, particularly, when this Court cannot ignore the fact that in the case in hand, the petitioner has, admittedly, failed in proceedings under Section 311 CrPC which were taken upto the Apex Court, whereby his SLP was dismissed vide order dated 8.12.2014 and it is immediately, thereafter, on 18.12.2014, the petitioner moved the instant application under Section 216 CrPC, as he could not digest the orders passed by different Courts upto the Apex Court in proceedings under Sections 311 CrPC. It seems that what the petitioner could not succeed directly, he is trying to achieve indirectly, as the very object of the remedy invoked under Section 216 CrPC is nothing but virtually the repetition of relief sought in proceedings under Section 311 CrPC. The material available on record is not sufficient to establish that the respondent-accused can be charged for offence under Section 307 IPC, though unfortunately respondent no.3 has died during the

proceedings. This Court feels that even the record maintained by the hospital seems to be tampered with, as there is clear over-writing in the same, a copy of which has already been placed on record of this file.

In this view of the matter, this Court does not find any illegality in the impugned order passed by learned Sessions Judge.

Accordingly, the present petition is dismissed.

September 29, 2016
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No