

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-8337 of 2016 (O&M)
DECIDED ON: April 25, 2016

ABHISHEK KUMAR

....PETITIONER

VERSUS

STATE OF PUNJAB & ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Aman Bansal, Advocate,
for the petitioner.

JASPAL SINGH, J.

CRM-7930-2016

Documents (Annexures P-1 to P-9) are taken on record, subject
to all just exception.

CRM stands disposed of.

Main case

By virtue of this petition, preferred under Section 482 of the
Code of Criminal Procedure, the petitioner has sought quashing of
impugned order dated 13.10.2015 passed by Ld. Chief Judicial Magistrate,
Sangrur (Annexure P-6) whereby an application for amendment/alteration

of charge has been dismissed as well as impugned order dated 17.02.2016 passed by ld. Additional Sessions Judge, Sangrur (Annexure P-8) vide which the revision petition preferred by him against order dated 13.10.2015 has been dismissed.

2. While assailing the impugned orders passed by both the courts below, it has been argued with vehemence by learned counsel for the petitioner that while disposing of an application preferred by the petitioner, Ld. Magistrate as well as revisional court did not apply its mind while framing the charge. There are sufficient material(s) on record in the shape of statements of witnesses recorded under Section 161 Cr.P.C. as well as their testimony made during the course of trial. At the time of framing charge on 16.10.2012, the ld. Additional Sessions Judge, Sangrur has also taken erroneous view by not introducing the relevant sections in the charge sheet.

3. Learned counsel for the petitioner further contends that the application moved in the trial court was not forwarded by learned Public prosecutor and trial court had taken a view that such an application has been filed just to delay the disposal of the case. Since, there is sufficient evidence to attract Section 307 and 458 IPC, charge-sheet deserves to be amended by adding the offence falling within the purview of Sections 307 and 458 IPC. Learned counsel for the petitioner further contends that the challan against the accused was presented by SHO Police Station City Sangrur for trial of the accused for the offence punishable under Sections

307, 341, 506, 148 read with Section 149 IPC on 21.12.2009 but in the impugned order dated 16.10.2012, the charge was framed only for the commission of offence punishable under Sections 342, 506, 149 IPC. Moreover, it is well settled that application for amendment of charge can be moved at any stage before the passing of the final order of conviction or acquittal.

4. To buttress his contention, learned counsel for the petitioner has relied upon the pronouncement of Hon'ble Apex Court delivered in ***“Hasanbhai Vailibhai Qureshi vs. State of Gujrat and others”, 2004(2) RCR (Criminal) 463***. Similar, view was taken in case ***“Ashwani Kumar vs. The State of Haryana”, 1994 (2) RCR (Criminal) 137***.

5. After bestowing due consideration to the submissions made by learned counsel for the petitioner and scrutinizing the impugned orders, this Court does not find any legal and factual substance in the same.

6. No doubt, the charge can be amended/alterd at any stage before the passing of the final order of conviction or acquittal as has been observed in the above referred authorities but at the same time, intention of the petitioner-complainant is to be seen.

7. In the case in hand, charges were framed by Id. Additional Sessions Judge vide order dated 16.10.2012 observing that only offence under Sections 342, 506 and 149 IPC prima facie are made out and the case is fixed for the evidence of prosecution. During the course of evidence, the prosecution examined complainant Abhishek Sharma, Harsh

Sharma and Pawan Kumar material witnesses up to 17.12.2014 but till that date, no application for amendment of the charge was moved. Thereafter, statements of Inspector Sanjiv Goel, ASI Narinder Singh, and DSP William Jeji were recorded on 13.03.2015. But to the utter surprise, even at that time, no such application was moved by the prosecution. Thereafter, prosecution closed its evidence and the case was listed for examination of the accused under Section 313 Cr.P.C. Accordingly, the statements of respondents-accused were recorded under Section 313 Cr.PC for eliciting their explanation and the case was fixed for the defence evidence. It was only on 06.08.2015, petitioner Abhishek Kumar filed an application for amendment of charge.

8. Here, it would also be pertinent to mention that no revision petition was preferred by the complainant-petitioner or the prosecution against the order dated 16.10.2012 passed by the then Additional Sessions Judge, Sangrur whereby the charges were framed. Application for the amendment of charges was moved by the petitioner approximately after about 3 years, that too, when the case was at its penultimate. Even, otherwise, there is no prima facie evidence to attract either offence under Section 307 IPC or 458 IPC. The ld. Trial court has rightly observed in the impugned order that the application has been filed by the petitioner just to delay the disposal of the case, that too, with malafide intention. Even otherwise, there is simple assertion in the application for amendment of charge that accused Vinod Pal was having a plastic cane in his hand, which

was handed over to accused Padam Pal by him and at that time Ravinder Pal, who was standing in his apartment was exhorting to the effect that *“what are you doing there by standing, you should throw them in Bhakra Canal by picking up from there”*. There is no injury on the person of complainant/petitioner falling within the purview of Section 307 IPC. Thus, the impugned order does not call for any interference by this Court as there is no infirmity, illegality in the impugned order. Thus, this Court does not find any merit in the instant petition. Accordingly, the same is dismissed.

APRIL 25, 2016
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(JASPAL SINGH)
JUDGE