

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

Crl. Misc. No. M-8945 of 2016

DATE OF DECISION: 28.03.2016

Lalit

.....Petitioner

Versus

State of Haryana

.....Respondent

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes)**
2. **To be referred to reporters or not? (Yes)**
3. **Whether the judgment should be reported in the Digest? (Yes)**

Present:- Mr. Pardeep Virk, Advocate  
for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

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**DAYA CHAUDHARY, J.**

The present petition has been filed under Section 482 Cr.P.C. read with Section 397/401 Cr.P.C. for quashing of charge-sheet dated 20.10.2015, whereby, charges have been framed under Sections 328,377,498-A read with Section 34 IPC in case FIR No. 65 dated 2.9.2015 registered under Sections 328,34,377,498-A IPC at Police Station Women Cell, District Sonapat. A further prayer has also been made for quashing of order dated 25.2.2016, whereby, the application moved by the petitioner for remand of the case to the Magistrate has been dismissed.

Learned counsel for the petitioner contends that as per the statement of victim recorded under Section 164 Cr.P.C., there was no allegation of unnatural sex and charges have been framed without

considering the same. Initially the police prepared the request (Pulanda) for sending sample to the chemical examiner for analysis as it was suspected to be a case of poisoning but the charges were framed without having the FSL report, which was received on 12.2.2016. No common poison was detected. Learned counsel further contends that an application was also moved by the complainant for conducting re-examination of sample from CFSL, Hyderabad but the same was rejected by the trial Court. Thereafter an application for dropping/altering the charge under Section 328 Cr.P.C. was moved by the petitioner to remand the case to learned Magistrate. Said application was dismissed on the ground that there is no provision under the Code of Criminal Procedure to transfer/remand the matter, whereas, the Court can drop the charge at any stage even before pronouncement of the judgment. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **CBI Vs. Karimullah Osan Khan** 2014 (11) SCC 538, of this Court in **State of Punjab Vs. Tara Singh** 1987 (1) R.C.R. (Criminal) 184, **Ravi Karan Vs. State of Punjab** 2003 (3) AICLR 764 and **Lakhveer Singh Vs. Daljit Kaur and others** passed in Crl. Revn. No. 1479 of 2013 on 3.5.2013, in support of his arguments.

Learned counsel for the respondent-State submits that it is for the trial Court to alter the charge at the stage of trial if some material/evidence comes on record during trial. It is for the trial Court to see whether any alteration or modification of the charge is necessary after recording of evidence during trial. Learned State counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **State of Maharashtra Vs. Salman Salim Khan and another** 2004 (1) RCR (Criminal) 314, in support of his contentions.

Heard the arguments advanced by learned counsel for the

parties and have also perused the impugned order and other documents available on the file.

The short controversy in the present case is as to whether the trial of the case can be transferred to the subordinate Court in the absence of evidence i.e. without recording the statement of the witness.

In the present case, the charges were framed without having the FSL report. Thereafter an application was moved by the petitioner for remand of the case on the ground that as per FSL report, no poison was found and the offence under Section 328 IPC was not made out. The case was, therefore, triable by the Court of judicial Magistrate. Undoubtedly, the Court is empowered to alter or amend the charge under Section 216 Cr.P.C. However, FSL report is the only corroborative evidence and cannot be considered to be the conclusive proof. The appreciation of evidence can be made during trial after getting sufficient evidence. Learned counsel for the petitioner is not able to show as to how the trial of the case can be transferred only on receipt of FSL report. In **Salman Salim Khan's case (supra)**, it has been held that charge can be altered at any stage of the trial depending upon the material brought before the trial Court in the form of evidence. It has also been held that the higher Court cannot go into the correctness or sufficiency of evidence and give conclusive finding about the material. It should be left to the trial Court to alter or to modify any charge at the appropriate stage. The relevant paras No. 12 and 13 of the said judgment are reproduced as under:-

We are of the opinion that though it is open to a High Court entertaining a petition under section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted

by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. By relying upon the decisions of the apex Court most of which were with reference to appeals arising out of convictions, we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under section 304 Part II, IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage. At the same time we are also in agreement with the arguments of learned counsel for the respondents that even the Sessions Court ought not to have expressed its views in such certain terms which indicates that the Sessions Court had taken a final decision in regard to the material to establish a charge punishable under section 304 Part II, IPC.

Therefore, we think it appropriate that the findings in regard to the sufficiency or otherwise of the material to frame a charge punishable under section 304, Part II, IPC of both the courts below should be set aside and it should be left to be decided by the court trying the offence to alter or modify any such charge at an appropriate stage based on material produced by way of evidence.

In the said judgment, the charge was framed by Sessions

Judge for offence punishable under Section 304 Part-II IPC and the Metropolitan Magistrate under Section 304-A of the IPC. It was held that if the Magistrate comes to the conclusion that there is sufficient material to charge the accused for a more serious offence than the one punishable under Section 304-A, he shall proceed to do so without being hindered or influenced by the observations or findings by the High Court in any manner. The decision of the Magistrate will be based on the material brought at the stage of trial. In that case the High Court remitted the trial of the case to the Court of Magistrate and subsequently the matter reached to Hon'ble the Apex Court.

The trial Court while dismissing the application and while passing impugned order has held as under:-

“Charges were framed after perusing the challan report and other documents as prima facie case was made out against the accused. No doubt, at the time of framing of charges, FSL report was not received. However, FSL report is corroborative evidence and not conclusive evidence. Further, its appreciation can be made during the evidence of doctor at the time of trial. Only on the basis of not finding poison in FSL report, trial cannot be transferred once charges have been framed. Further, there is no provision under law to transfer trial when it has been once commenced on the ground of receiving FSL report. Authority cited by the accused is not applicable in the present case being having distinguished facts.”

In the present case also, the evidence has not come before the trial Court on the basis of which it can be said that the lesser offence is made out which is not triable by Sessions Court. It has been observed by

the trial Court that the appreciation of evidence can be made after recording statement of Doctor.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

However, in case any evidence is available during trial then the petitioner is at liberty to raise this issue at an appropriate stage.

March 28, 2016  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**