

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

Crl. Revision No.3697 of 2015 (O&M)
Date of decision: November 16th, 2016.

Prithvi Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Ashwani Gaur, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana,

JAISHREE THAKUR, J.

Challenge is to the order dated 13.8.2015 framing charges
under Sections 498-A, 323, 406 and 377 IPC.

In brief, the facts are that an FIR came to be registered against
the petitioner, his father, mother, brother and sister in law, by his wife
alleging that the marriage was solemnized with the petitioner herein on
27.7.2014 as per Hindu rites. In the said FIR, it was stated that after
marriage the complainant was subjected to harassment on account of
bringing less dowry. It was also alleged that the petitioner herein used to
beat the complainant and after consuming intoxicating substances subjected
her to unnatural sex. She was thrown out of the house on account of non
fulfillment of demand for a car, apart from cash and jewelry. It was further
alleged that while throwing her out of her matrimonial home the accused

persons retained her *stridhan*.

Aggrieved of the framing of charge under Section 377 and 406 IPC, the present revision petition has been filed.

Mr. Ashwani Gaur, counsel for the petitioner argues that the police on final investigation submitted a report under Section 173 of the Code of Criminal Procedure (for short '**the Cr. P.C.**') without any evidence to connect the petitioner accused with the commission of offence under Section 377 and 406 IPC. The challan that was presented did not mention the commission of offence under Section 406 IPC. However, the learned Additional Chief Judicial Magistrate, vide order dated 13.8.2015 has framed charges for commission of offences under Sections 498-A, 323, 406 and 377 IPC, while observing that there was a prima facie case for framing such charges. It is argued that it has now become a tendency on behalf of the wives to aggravate the allegations and offences which are at most times unsustainable, as in the instant case.

Per contra, Mr. Anmol Malik, AAG, Haryana, counsel appearing on behalf of the State submits that the learned Additional Chief Judicial Magistrate found a prima facie case punishable under Sections 498-A, 323, 406 and 377 IPC and, thus, the petitioner has been rightly charge sheeted for commission of those offences.

I have heard counsel for the parties and perused the record.

Section 216 of the Cr.P.C. confers jurisdiction on all courts to alter or add to any charge framed earlier at any time before the judgment is pronounced. The courts can exercise this power of addition or modification

some connection or link with the charge sought to be added, amended or modified. A charge can be altered or added for an offence made out by recording of evidence during the course of the trial.

The Hon'ble Apex Court in **C.B.I. Versus Karimullah Osan Khan Criminal Appeal No. 1127 of 2009 decided on 4.3.2014**, while dealing with Section 216 of the Cr.P.C., came to hold that the charges can be altered at any time and enlarged the scope of expression “at any time” to mean before the judgment is pronounced, while keeping in mind that the court should also see that its order would not cause any prejudice to the accused. In **Anant Prakash Sinha @ Anant Sinha Versus State of Haryana and another Criminal Appeal No. 131 of 2016 decided on 4.3.2016**, the Hon'ble Apex Court again went into the jurisdiction of the courts under Section 216 of the Cr.P.C. to alter or to amend charges. The underlying principle in both the judgments rendered by the Hon'ble Apex Court is that the charges can be altered, amended at any time during the trial but before the pronouncement of the judgment. Such addition, deletion or modification would have to be made on the basis of the evidence that may come before the court after commencement of the trial.

In the instant case, the petitioner seeks for deletion of the charges that have been framed under Sections 377 and 406 IPC, as set out in the impugned order. Section 377 IPC pertains to unnatural offence which is punishable with imprisonment for life or with imprisonment of either description for a term, which may extend to ten years and shall also be

liable to fine to person whosoever voluntarily has carnal intercourse against the order of nature with any man, woman or an animal. Section 406 IPC pertains to punishment for criminal breach of trust which is punishable either by imprisonment or by fine extended upto period of three years. A reading of the FIR shows that specific allegations have been made against the petitioner for demand of dowry, throwing the complainant out of the matrimonial home, retaining of *stridhan*, subjecting her to unnatural sex as well as assaulting the complainant.

The counsel for the petitioner has argued that the medical report does not show that the complainant had been subjected to any injuries or to unnatural sex at the hands of the petitioner . Such an argument is not sustainable since the medical examination was not conducted immediately after filing of the complaint. The examination seems to have been conducted on 29.5.2015 whereas the complaint is dated 18.2.2015. Thus, there is almost gap of more than three months as to when the said medical examination was conducted. Moreover, the FSL report was still awaited, per the report of the doctor himself. It is only after commencement of trial and leading of evidence that an informed decision can be taken as to whether deletion or modification of charge would be warranted. The learned Additional Chief Judicial Magistrate has formed a prima facie opinion that the said charges were made out. No prejudice has been caused to the petitioner by framing the charges on the basis of the materials to be considered under Section 240 of the Cr.P.C.

There is no ground made out for interference in the revision.

The same is dismissed with the direction that any observations made herein would not affect the merits of the case.

November 16th, 2016
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No