

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 22nd APRIL, 2016
DECIDED ON : 10th MAY, 2016

+ **CRL.M.C.71/2016 & CRL.M.A.No.299/2016**

‘X’ Petitioner

Through : Mr.Sandeep Das, Advocate with
Ms.Mehak Khurana, Advocate.

VERSUS

THE STATE OF NCT OF DELHI & ANR. Respondents

Through : Ms.Richa Kapoor, ASC.
Ms.Geeta Luthra, Sr.Advocate with
Mr.R.K.Bachchan & Ms.Nandini
Parmar, Advocates for R2.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Present petition under Section 482 Cr.P.C. has been filed by petitioner ‘X’ (Changed name) to challenge the legality and correctness of an order dated 18.11.2015 of learned Addl. Sessions Judge whereby he declined to frame additional charges against respondent No.2 under Section 216 Cr.P.C. The petition is contested by the respondent No.2.

2. I have heard learned counsel for the parties and have examined the file. Learned counsel for the petitioner urged that the Trial Court committed error in declining to frame additional charges under Sections 313/354/377 IPC despite the facts that there were specific allegations against

the respondent No.2 in the charge-sheet filed by the State. A video CD recording conversation between the prosecutrix and the accused was on record to corroborate her version. In 164 Cr.P.C. statement also the prosecutrix had levelled allegations attracting Sections 354/313/377 IPC. No new material / evidence was required for framing additional charges under Section 216 Cr.P.C. He further urged that the prosecutrix cannot be forced to appear for examination time and again. Reliance was placed on '*State of Punjab vs. Gurmit Singh & Ors.*', 1996 (2) SCC 384 and '*Shri Rajinderpal Singh vs. The State through CBI*', MANU/DE/1581/2008.

3. Learned Addl. Standing Counsel for the State / respondent No.1 supported the petitioner and urged to direct the Trial Court to dispose of the application moved under Section 216 Cr.P.C. on merits.

4. Learned Senior Counsel for the respondent No.2 submitted that the present petition filed by the petitioner is not maintainable; she has no locus standi to challenge the impugned order. The application in question has not yet been disposed of by the Trial Court. Authenticity of the allegations levelled by the prosecutrix is shrouded with suspicion. The alleged CD is a false and doctored document and its authenticity is yet to be established during trial. Reliance was placed on '*Sundeeep Kumar Bafna vs. State of Maharashtra & Anr.*', AIR 2014 SC 1745; '*Shiv Kumar vs. Hukam Chand & Anr.*', 1999 (7) SCC 467; '*Sharad Kumar Aggarwal vs. State & Arun Mehra vs. State of NCT of Delhi*', 2012 (3) JCC 2196; '*Thakur Ram & Ors. Vs. State of Bihar*', AIR 1966 SC 911; '*Sachin Kumar Saraf vs. State & Ors.*', 2009 SCC OnLine Del 2376; '*J.K.International vs. Govt. of NCT of Delhi & Ors.*', AIR 2001 SC 1142; '*Praveen Malhotra vs. State*', 1990 (41) DLT 418; '*Indu Bala vs. State*', 1991 Cr.L.J. (Del) 1774; '*CBI vs.*

Karimullah Osan Khan, 2014 (3) JCC 1807 & '*Jasvinder Saini & Ors. Vs. Govt. of NCT of Delhi*', 2013 (3) JCC 2168.

5. On perusal of the record, it reveals that upon completion of investigation a charge-sheet was filed against respondent No.2, his wife Meera Thakur and brother Mukul Thakur for committing offences punishable under Sections 376(2)(f)/109/34 IPC. Vide order dated 22.02.2014, the learned Metropolitan Magistrate took cognizance of the said offences against all of them. Vide order dated 03.07.2014, the learned Addl. Sessions Judge after hearing all the parties including the counsel for the complainant ordered to frame charge under Section 376(2)(f) IPC only against respondent No.2. Accused Meera Thakur and Mukul Thakur were discharged. The petitioner / prosecutrix challenged the said order in Crl. Revision Petition No.637/2014. This Court vide order dated 17.09.2015 dismissed the said revision petition. It is informed that the petitioner / prosecutrix has challenged the order of this Court before the Hon'ble Supreme Court in SLP (Crl.) No.9960/2015. Vide order dated 07.12.2015, notices have been issued and the cross-examination of the prosecutrix before the Trial Court has been stayed.

6. It is relevant to note that State did not move any application for addition / alteration of charges framed by the learned Trial Court. It is the prosecutrix who has filed the application under Section 216 Cr.P.C. for framing of additional charges under Sections 354/313/377 IPC. The prosecutrix / petitioner did not explain as to why she did not opt to challenge order on charge dated 03.07.2014 omitting to frame charges under Sections 354/313/377 IPC.

7. The Trial Court specifically observed in its order dated 18.11.2015 that no additional charge could be framed or altered only upon mere allegations in the complaint. It was noted that the statement of the prosecutrix was in progress. The Trial Court was of the opinion that at that stage when the prosecutrix had already been examined substantially it would be futile exercise to frame additional charges under Sections 354/313/377 IPC prior to recording of her cross-examination. The application, thus, was kept pending and ordered to be disposed of after recording complete statement of the prosecutrix. I find no illegality or material irregularity in the impugned order.

8. Section 216 Cr.P.C. gives powers to the Trial Court to alter and add any charge at any time before the judgment is pronounced subject to the conditions mentioned therein; the Trial Court is not oblivious to it. It, however, did not entertain the application at that stage because the evidence of the prosecutrix was under-way. The Trial Court was of the view that after the evidence of the prosecutrix is completely recorded, application in hand would be disposed of. Apparently, after framing of the charge vide order dated 03.07.2014 which remained unchallenged even in Crl. Revision Petition No.637/2014 before this Court, there was no material to support the addition or alteration of charges. Subsequent to the taking of cognizance of the offence and framing of the charge vide order dated 03.07.2014, the Trial Court did not have any material entitling the prosecutrix to seek alteration of charge.

9. In '*CBI vs. Karimullah Osan Khan*', 2014 (11) SCC 538, Hon'ble Supreme Court in para 18 held :

“18. Section 216 Cr.P.C. confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 Cr.P.C., only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 Cr.P.C. and other related provisions.”

(Emphasis given)

10. It also quoted paras 11 & 12 of ‘Jasvinder Saini vs. State (Govt. of NCT of Delhi)’ in para 15. It reads as :

“11. the court’s power to alter or add any charge is unrestrained provided such addition and / or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court

decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alteration would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary alter the commencement of the trial having regard to the evidence that may come before the court.

12. In the case at hand the evidence assembled in the course of the investigation and presented to the trial court was not found sufficient to call for framing a charge under Section 302 IPC.”

(Emphasis supplied)

11. Arguments regarding the framing of additional charge(s) are best left to be decided by the Trial Court at an appropriate stage of the trial. The Trial Court has for the reasons mentioned in the impugned order rightly kept the application under Section 216 Cr.P.C. pending to record first the complete testimony of the prosecutrix. No final order has yet been passed by the Court below to intervene.

12. The petition lacks merit and is dismissed. Pending application also stands disposed of.

13. Observations in the order would have no impact on merits of the case. The Trial Court will be at liberty to dispose of application under section 216 Cr.P.C. at appropriate stage after recording the statement of the prosecutrix.

(S.P.GARG)
JUDGE

MAY 10, 2016 / *tr*

