

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 922 of 2017

Painku Kolta @ Panku S/o Jagarnath Kolta, Aged About 65 Years
R/o Chitarpur (Mudapara), Police Station Dhourpur, District
Surguja, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Ambikapur, District
Surguja, Chhattisgarh.

---- Respondent

For applicant – Shri Anurag Singh, Advocate.

For Respondent/State –Shri Ramakant Pandey, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

27/09/2017

Heard.

1. This petition is against the order dated 29/07/2017 whereby the court while examining the case found it to frame additional charge under Section 323 IPC against the accused/applicant.
2. Learned counsel for the applicant would submit that prosecution witnesses total 5 witnesses were examined but they have not deposed anything and while final argument were being heard, this order has been passed. He submits that in the facts of this case, court cannot frame additional charge against the applicant as no evidence is existing when other prosecution witnesses have not supported the case. He submits that prosecution witnesses to whom court has asked to summon was given up by the prosecution on 9/03/2017. Consequently,

it would be prerogative of the prosecution to call for the evidence which cannot be substituted by the court. He further placed his reliance in a case reported in **2016 (6) SCC 105**.

3. Perused the documents filed along with the petition.

4. Case of the prosecution, in brief, is that, applicant who was related to the other victim who was minor aged about 9 years tried to commit sexual overt act. At that time, her sister came there who was also minor aged about 6 years when she cried at that time applicant caught hold of her neck and pressed it and thereby had voluntarily caused hurt.

5. In case of **Jasvinder Saini and Thakur Shah v. King Emperor** reported in **1943 AIR (PC) 192**, it has been held as under:-

“17. Section 216 Cr.P.C. gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions “at any time” and before the “judgment is pronounced” would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

6. Hon'ble Supreme Court in case reported in **2016 (6) SCC 105** has further held as under:-

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. (See *Harihar Chakravarty v. State of W.B.* 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 Section 216 Cr.P.C. and other related provisions.”

7. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. was again reiterated by their Lordship in case of ***State of Rajasthan Vs. Fatehkaran Mehdu***, reported in **AIR 2017 SC 796**. It is stated that at the stage of framing of a charge, the Court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied.

8. Now coming back to the present case. Apart from the statement of victim who is minor girl who was subjected to sexual overt act statement of her sister who is aged about 6 years is on record wherein she has stated that at the time of incident she saw that applicant was

sitting over her sister, then she called her mother at that moment applicant caught hold of her neck and tried to press it, then she resisted and shouted, at that time applicant left her as also her sister. Considering her statement, it cannot be said that no material exist to frame charge against the applicant under section 323 IPC. The incident and the background and chain continuity suggest that there is definite link in between offence committed of sexual harassment/overt act and also the actions for causing voluntary hurt.

9. In view of this, I do not find any irregularity or illegality in the order dated 29/07/2017 framing of charge. Accordingly, the petition is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE