

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL REVISION APPLICATION NO.25/2017**

Mrs. Leela Narvekar,
Daughter of Limo Narvekar,
Aged 38 years,
Private Service
Arcar, Curca,
Tiswadi, Goa.

.... **Petitioner**

Versus

1. Mr. Keshav Narvekar @ Cortez,
S/o Mary Narvekar @ Cortez,
Aged 70 years, unemployed,
R/o H.No.108/2,
Canturim, Curca,
Tiswadi, Goa.
2. Msr. Savitri Narvekar @ Cortez,
w/o Keshav Narvekar @ Cortez,
Aged 65 years, Private Service,
R/o H.No.108/2,
Canturim, Curca,
Tiswadi, Goa.
3. Mr. Manohar Narvekar @ Cortez,
S/o Keshav Narvekar @ Cortez,
Aged 35 years, Private Service,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.
4. Mrs. Geeta Narvekar @ Cortez,
W/o Manohar Narvekar @ Cortez,
Aged 30 years, Housewife,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.
5. Mr. Sanjay Narvekar @ Cortez,
S/o Keshav Narvekar @ Cortez,
Aged 32 years, Service,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.

6. Mrs. Prema Narvekar @ Cortez,
w/o Sanjay Narvekar @ Cortez,
Aged 28 years, Housewife,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.
7. Mr. Nanda Narvekar @ Cortez,
S/o Keshav Narvekar @ Cortez,
Aged 34 years, Service,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.
8. Mrs. Namrata Narvekar @ Cortez,
w/o Nanda Narvekar @ Cortez,
Aged 29 years, Housewife,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.
9. Mr. Prakash Narvekar @ Cortez,
S/o Keshav Narvekar @ Cortez,
Aged 40 years, unemployed,
R/o H.No.108/2,
Arcar, Curca,
Tiswadi, Goa.
10. State of Goa.
Through P. I.
Panaji Police Station,
Panaji, Goa.

.... Respondents

....

Shri Nigel Da Costa Frias with Ms. Maria Correia, Advocates
for the Petitioner.

Shri Manoj Naik, Advocate for respondents no.1 to 9.

Shri S.R.Rivankar, Public Prosecutor for respondent
no.10.

CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON :31.10.2017.
PRONOUNCED ON :03.11.2017.

JUDGMENT:

1. Aggrieved by an order of the President, Children's Court for the State of Goa at Panaji, which has dropped charge under Section 2 (m) (i) punishable under Section 8 (2) of the Goa Children's Act, 2003 against accused nos.1 to 9, the petitioner (Original complainant) has preferred this Criminal Revision Application under Section 401 of the Code of Criminal Procedure.

2. The brief facts are that the respondents-original accused nos.1 to 9 alleged to have caused injuries in an altercation between two families on 24.9.2014 in which three young girls, aged about 10 years 3 months, 13 years and 1 month and 17 years and 1 month suffered injuries. Admittedly, those three girls fall within the definition of term, "child" as per Section 2 (d) of the Goa Children's Act, 2003. It seems that it was an incident of trespass and assault on the family of the complainant by respondents no.1 to 9. The only question which arises for determination is as to whether after already framing charge against the respondents no.1 to 9 by the President of Children's Court under Sections 143, 144, 448, 427, 323 read with Section 149 IPC and under Section 2 (m) (i) punishable under Section 8 (2) of the Goa Children's Act, 2003, the President of Children's Court was correct in dropping Section 2(m) (i) of the Goa Children's Act and then

referring the matter back to the Sessions Court, North Goa, Panaji, for allotting the same to the learned Magistrate's Court having jurisdiction?

3. I have heard Shri Nigel Da Costa, learned counsel for the petitioner as well as Shri S.R.Rivankar, learned Public Prosecutor for respondent no.10 and Shri Manoj Naik, learned counsel for the respondent nos.1 to 9.

4. The learned counsel appearing for the petitioner and the learned Public Prosecutor Shri Rivankar took strong exception to the impugned order, as according to them, once a charge is framed, the Court cannot discharge the accused and revert back to a stage, which is not provided for in the Code of Criminal Procedure. That would tantamount to reviewing her own order framing charge earlier, which is not the spirit of Section 216 Cr.P.C. It is submitted that Section 216 Cr.P.C. does not contemplate dropping of charge.

5. It is submitted by learned counsel for respondents no.1 to 9 that it being an interlocutory order, the Revision is not maintainable.

6. Sub-section (1) of Section 216 Cr.P.C. provides

that any Court may alter or add to any charge at any time before judgment is pronounced. This provision does not speak about discharge of an accused against whom charge for an offence has already been framed and it speaks only for alteration or addition to any charge which has already been framed against such an accused. Chapter-XVIII of the Code provides for trial before a Court of Session and Section 227 thereof provides that if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Section 228 provides that if after such consideration and hearing as aforesaid the Judge is of the opinion that there is ground for presuming that the accused has committed an offence which has exclusively triable by the Court he shall frame in writing a charge against the accused. It is, thus, clear that in a case which is triable before a Court of Sessions, here it is the President of the Children's Court under the Goa Children's Act, these provisions provide in what condition and in what manner the accused can be discharged for an offence for which he has been prosecuted and in what condition and manner the Sessions Judge would proceed to frame charge

against him. A conjoint reading of Section 216 and Sections 227 and 228 Cr.P.C. makes it clear that these provisions are entirely separate and independent to each other and where Section 216 Cr.P.C. provides for alteration or addition of a charge in a case in which charge has already been framed against an accused. Sections 227 and 228 Cr.P.C. provide for discharge of an accused at an initial stage or framing of charge against him by the Court. Thus, it is clear that once the Court proceeds to frame charge against the accused after declining his prayer to discharge him, there is no subsequent stage at which the accused can be discharged. A useful reliance has been placed by learned counsel in a case law reported in **(2016) 4 CriLR 1856 of Rajasthan High Court in the case of Smt.Anita Singh w/o Suresh Charan d/o Raghuraj Singh Vs. State of Rajasthan**, which is squarely applicable to the present set of facts. Para 12 of the said judgment can be reproduced for advantage which reads thus:-

"12. The question raised in the present case about discharge of an accused at the stage of consideration of an application under Section 216 Cr.P.C. was directly involved in the case of Tapati Bag Vs. Patitpaban Ghosh & Ors. (supra). A learned Single Bench of the Hon'ble

Calcutta High Court after considering the provisions of Sections 227, 228 and 216 Cr.P.C. held that it is needless to mention that the question whether charge should be framed against the accused or he should be discharged has to be considered simultaneously and if on such consideration the Court thinks that the accused should not be discharged and rather charge should be framed against him, in that case the charge has to be framed against the accused. It is evident from the scheme of the provisions of the Chapter-XVIII of the Criminal Procedure Code as well as from the logic of the sequence that once the Court decides to frame charge under Section 228 Cr.P.C., there is no question of discharging him at a later stage by exercising the power under Section 227 Cr.P.C. Once charge has been framed under Section 228 the trial has to proceed according to the procedure provided in the sections following the Section 228 Cr.P.C. and the process cannot be put to back-gear for discharging the accused thereafter under

Section 227 Cr.P.C. Where a charge has been framed by the Court of Session under Section 228, the said Court thereafter cannot discharge the accused under Section 227 Cr.P.C. Even if an accused against whom a charge has been framed under Section 228 Cr.P.C. feels aggrieved by the framing of charge he has either to face the trial or he may approach the High Court in its revisional jurisdiction. If the Court of Session remains free to discharge an accused on reconsideration under Section 227 even after a charge has been framed under Section 228, in that case it would be open to the accused persons against whom charge has already been framed to move the same Court one after another for reconsideration and discharge on repeated occasions thereby making it practically impossible to proceed with the trial of the case expeditiously or at all, even if such moves lack merit. After taking into consideration Section 216 Cr.P.C., it was further held that a plain reading of the section would show that the alteration or

addition referred to therein contemplates modification of or addition to charge but not discharging an accused in respect of a charge already framed so as to bring the trial itself to an end in respect of such accused. There may be addition of a new charge or even substitution of a charge in an appropriate case but Section 216 does not contemplate discharge of an accused or the termination of the trial in respect of any accused. Sub-section (2) requires that every alteration or addition to a charge has to be read and explained to the accused. The question of reading and explaining such alteration or addition would be meaningless in a good number of cases if discharge is contemplated by such alteration or addition. Sub-sections (3) and (4) speak of proceeding with the trial or of directing a new trial or adjourning the trial. This also is a clear indication that any alteration or addition to charge shall not be of such nature as to get the accused discharged and bring the trial to an end in respect of that accused. Sub-section (5) requires that where

the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained on the same facts. Here also the sub-section contemplates of proceeding with the trial with fresh sanction, if necessary, and not ending the trial in respect of any accused by any obliteration of the charge. It is therefore evident that Section 216 does not empower the court to discharge an accused and bring the trial itself to an end in respect of an accused against whom a charge has already been framed, without following the procedure prescribed in the Code regarding the trial of a case. It was also held that Section 227 being designed for a particular stage of the judicial proceeding one cannot revert to that provision when that stage has already been crossed. It was also held that the Court of Session has no power to discharge an accused under Section 227 once a charge under Section 228 has already been framed".

7. Thus, the law is well settled on this point that once a charge is framed against the accused under Section 228 Cr.P.C., there is no question of discharging him at a later stage and the trial has to proceed further according to procedure provided in the following Section 228 Cr.P.C and the process cannot be put to back-gear for discharging the accused thereafter under Section 227 Cr.P.C.

8. The learned President, Children's Court in the impugned order has, therefore, committed an illegality by dropping Section 2 (m) (i) punishable under Section 8 (2) of the Goa Children's Act from the charge which had already framed against respondents no.1 to 9. This is, of course, without going into the merits of the case. If the respondents feel aggrieved by framing of charge they may either face the trial or could have approached the High Court in its revisional jurisdiction. Be that as it may.

9. Since the jurisdiction of this Court is invoked under Section 401 Cr.P.C., there is no question of bar under Section 397 (2) Cr.P.C. to exercise the revisional powers in case of an interlocutory order. The learned counsel for the petitioner, has pressed into service a judgment of the Hon'ble Supreme Court reported in **1990 (3) SCC 588 in case of**

Haryana Land Reclamation And Development Corporation Limited Vs. State of Haryana. The question

before the Hon'ble Supreme Court was whether the order of discharge passed by the Chief Judicial Magistrate, Sonapat is or is not an "interlocutory order" within the meaning of Section 397 (2) Cr.P.C. It is observed in paragraphs 3 and 4 thus:

"3. The High Court in its impugned order has placed reliance on the observation of this Court made Bhagwant Singh v. Commissioner of Police and Anr. The question in the said case was whether in a case where first information report is lodged and after completion of investigation initiated on the basis of the first information report, the police submits a report that no offence appears to have been committed, the Magistrate can accept the report and drop the proceedings without issuing notice to the first informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased. Besides, examining the above question, this Court did not examine the intendment of Section 397(2) of the Code.

4. THERE are several decisions of this court explaining the term "interlocutory order" occurring in Section 397 (2) of the Code. In Amar Nath and Ors. v. State of Haryana and Anr. the said term is defined thus:

"THE term "interlocutory order" is a term of well-

known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, let-ters patent of the High Courts and other like statutes. In Webster'S New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in S.397 (2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision of the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code".

10. It appears that on an application moved by the respondents no.1 to 9 at Ex.D-52, the learned President of Children's Court has passed the impugned order. Section 216 Cr.P.C. does not contemplate any application being filed either

by the prosecution or by any witness including de facto complainant. It simply states the powers of the Court to alter the charge or add any charge to the charge already framed. The stage at which such alteration or addition to charge can be made is also indicated thereon. Such an alteration or addition can be made at any time before judgment is pronounced. Thus, the learned President of Children's Court has committed grave error not only in entertaining the application under Section 216 Cr.P.C. on behalf of the respondents but also dropping the charge under the Children's Act, which has already framed. The impugned order is thus improper and illegal, which deserves to be set aside.

11. Consequently, the Criminal Revision Application is allowed. The impugned order passed by the learned President, Children's Court, Panaji dated 28.2.2017 is hereby quashed and set aside. Special Case No.124/2014 is remitted back to the President of the Children's Court at Panaji.

12. Criminal Revision Application stands disposed of accordingly.

PRITHVIRAJ K. CHAVAN, J.