

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-16917 of 2017

Date of decision:4.12.2017

Chotti Kaur

...Petitioner

v.

State of Punjab and others

...Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

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Present: Mr. Prashant Bansal, Advocate for the petitioner.

Ms. Simranjeet Kaur, Assistant Advocate General, Punjab  
for the respondent-State.

Mr. Davinder Singh Khurana, Advocate for respondents  
No.2 to 6.

.....

**Inderjit Singh, J.**

The petitioner has filed this petition under Section 482 Cr.P.C. for quashing of impugned order dated 3.2.2017 (Annexure-P.7) passed by learned Additional Sessions Judge, Patiala in Criminal Revision Petition No.40 dated 21.12.2016 in case titled as “Chand Singh and others Vs. State of Punjab and Chotti Kaur”, whereby the order dated 2.11.2016 passed by the learned Judicial Magistrate Ist Class, Rajpura in application dated 9.6.2016 (Annexure-P.4) for alteration of charge by adding and framing the charge under Section 452 IPC in FIR No.52 dated 25.7.2015 registered for the offences under Sections 323, 341, 452, 149 and 506 IPC registered at

Police Station Sadar Rajpura, District, Patiala), has been allowed, being totally illegal against the law and facts, hence the same is liable to be quashed and the application dated 9.6.2016 (Annexure-P.4) moved by the petitioner against private respondents for alteration of charge by adding and framing the charge under Section 452 IPC should be allowed.

Notice of motion was issued in this case.

Ms. Simranjeet Kaur, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Davinder Singh Khurana, learned Advocate has appeared for respondents No.2 to 6 and contested this petition.

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

From the record, I find that the application has been filed before the learned Judicial Magistrate Ist Class, Rajpura, for alteration of charge by adding and framing the charge under Section 452 IPC against the accused (respondents No.2 to 6 herein) in the case.

The learned Judicial Magistrate Ist Class, Rajpura, after hearing the parties of the case allowed that application regarding adding the charge under Section 452 IPC on the basis of evidence and record. A criminal revision petition was filed by the accused before the Court of Session and the learned Additional Sessions Judge, Patiala vide order dated 3.2.2017 set aside the order and the application for alteration of charge for adding and framing the charge under Section 452 IPC was dismissed. Aggrieved from this order, the complainant-Chotti Kaur has filed this petition for quashing

of the impugned order dated 3.2.2017.

From the record, I find that the order dated 2.1.2016 (Annexure-P.6) passed by the learned Judicial Magistrate Ist Class, Rajpura, is correct as per evidence and law. No illegality has been committed by the Court below by accepting application for adding and framing charge under Section 452 IPC. I have gone through the FIR. In the FIR, the complainant has stated that when she and her daughter entered the house, then the accused entered into the house and caused injuries. Similar is statement of the complainant before the learned Judicial Magistrate Ist Class, Rajpura.

Keeping in view the facts and circumstances of the present case and in view of the evidence produced before the trial Court on oath *prima facie* the offence under Section 452 IPC is made out.

At the time of presentation of challan, the Police has deleted the offence under Section 452 IPC only on the ground that the informer has informed the Investigating Officer that the occurrence took place outside the house. At the time of framing of the charge, the Court is only to see that *prima facie* case is made out for framing of the charge. The charge can be amended at any stage. In view of the averments made in the FIR and the statement of the complainant before the trial Court, I find that the *prima facie* case for framing charge under Section 452 IPC is made out. The learned Additional Sessions Judge, Patiala, without any cogent ground has intervened in the order of the learned Judicial Magistrate Ist Class, Rajpura, which is correct as per evidence and law. The learned Additional Sessions Judge has in the revision petition substituted his opinion which is not

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permissible. He can intervene in the revision only if there is any illegality committed by the learned Judicial Magistrate Ist Class while passing the order. The impugned order passed by the learned Additional Sessions Judge is illegal and the same is liable to be set aside.

In view of the above discussion, I find merit in this petition and the same is allowed and the impugned order dated 3.2.2017 passed by the learned Additional Sessions Judge, Patiala, is set aside and that of the learned Judicial Magistrate Ist Class, Rajpura, is upheld.

December 4, 2017.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |