

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM No. M-6184 of 2017 (O&M)
Date of Decision:05.04.2017

Mithan Lal

... Petitioner

Versus

Ashok Kumar and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Parvesh Sachdeva, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.

The instant petition filed under Section 482 Cr.P.C. assails the order dated 03.02.2017 (Annexure P-7) passed by the learned Additional Sessions Judge, Fazilka vide which an application filed by the petitioner under Section 216 Cr.P.C. for amendment in the charge has been declined.

Brief facts are that the trial Court framed charges against the accused/respondents herein for offences under Sections 364, 452, 323, 324, 148 and 149 of the Indian Penal Code. The application under Section 216 Cr.P.C. was filed by the petitioner by setting up a version that the date and time of occurrence is 04.05.2013 at 11:00 p.m. wherein all the accused allegedly entered into house of the complainant at night with deadly weapons. As such it was prayed that offence under Section 458 IPC is attracted instead of Section 452 IPC.

Counsel appearing for the petitioner would vehemently submit that the application preferred under Section 216 Cr.P.C. has been wrongly and illegally dismissed. Since at the stage of framing of the charges, the Court was not required to go into the details of the case and it was only the

parameter of prima facie case that was to be applied.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that no interference in the matter is called for.

The criminal complaint was instituted by the complainant/petitioner herein in 19.05.2011. Complaint had been filed for offences under Sections 307, 364, 452, 323, 324, 325, 326, 148, 149, 506, 379, 427 and 120-B of Indian Penal Code. The learned Judicial Magistrate Ist Class, Fazilka vide order dated 15.03.2014 dismissed the complaint against accused Seema Rani and Saroj Rani but rest all the accused were summoned to face trial under Sections 323, 324, 452, 148, 149 IPC.

Concededly, petitioner preferred a criminal revision petition under Section 397 Cr.P.C. against the order dated 15.03.2014 raising a two fold prayer:

- i) for summoning Seema Rani and Saroj Rani as accused
- ii) for enhancing the offence.

The criminal revision petition was decided on 26.08.2015 by the learned Additional Sessions Judge, Fazilka and as per which Seema Rani and Saroj Rani were ordered to be summoned under Sections 323, 324, 452, 364, 148 and 149 IPC and the remaining accused were also ordered to be summoned under Section 364 IPC as well.

On a specific query having been put, counsel concedes that the order dated 26.08.2015 passed by learned Additional Sessions Judge, Fazilka has not been challenged further by filing of a petition under Section 482 Cr.P.C. Since in the revision petition preferred by the petitioner against order dated 15.03.2014 passed by the Judicial Magistrate Ist Class, Fazilka

there was a specific prayer for enhancing of offence and if it was the case of the petitioner/complainant that offence under Section 458 IPC was also to be cited, it was open for the petitioner to have raised a challenge to the order dated 26.08.2015 passed by the Additional Sessions Judge, Fazilka while deciding the revision petition. Concededly, such remedy has not been availed of.

While declining to interfere in the matter and while dismissing the instant petition, it would suffice to observe that the trial Court always has the jurisdiction under Section 221 (2) Cr.P.C. to consider the circumstances and pass appropriate order qua the accused for an offence to which he is not charged. Even the provisions of Section 216 Cr.P.C. permit any Court at any stage to alter any charge before the judgment is pronounced.

Petition is disposed of.

05.04.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

No