

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRR No.694 of 2017 (O&M)
Date of Decision: October 24, 2017**

Sunil Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil Chadha, Senior Advocate with
Ms.Swati Verma, Advocate
for the petitioner.

Ms.Simranjeet Kuar, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Sunil Kumar against respondent State of Punjab, challenging the impugned order dated 31.01.2017 passed by learned Judge, Special Court, Bathinda, vide which the application filed by the accused-petitioner for discharging him was dismissed.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the record, I find that when the trial was pending, an

application was filed by the accused-petitioner for his discharge and learned

trial Court vide impugned order dated 31.01.2017 dismissed the application and found that prima facie charge is made out under Section 21 of the NDPS Act and accordingly, the charge was amended and the trial Court fixed the case for summoning of PWs. The revision petitioner has not challenged the order qua framing of charge under Section 21 of the NDPS Act. He is only aggrieved from the order that after the amendment of the charge, the Court has again asked for summoning of PWs, which amounts to *de novo* trial.

Section 216 Cr.P.C. provides as under:-

216. Court may alter charge:-

- (1) Any court may alter or add to any charge at any time before judgment is pronounced.*
- (2) Every such alteration or addition shall be read and explained to the accused.*
- (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court to prejudice the accused in his defence or the prosecutor in the conduct of the case the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.*
- (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.*
- (5) If the offence stated in 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 had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”*

As per above provisions, the trial Court has power to summon the PWs and to give opportunity to both the parties for producing any evidence after the amendment of the charge, if it causes prejudice.

The perusal of the impugned order shows that the file in this case is stated to have been lost before the Magistrate and then it was reconstructed. During the arguments on the application, learned Public Prosecutor produced the photocopy of the FSL report. After the amendment of the charge, the prosecution has every right to prove the FSL report as per law. It has been brought to the notice of this Court that prosecution has produced this evidence qua FSL report and has not produced any other evidence.

In my view, no illegality has been committed by learned trial court by giving opportunity to the prosecution to produce the evidence after the amendment of the charge. No illegality has been committed by the Court while passing the impugned order dated 31.01.2017.

Therefore, finding no merit in the present petition, the same is dismissed.

October 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No