

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2018

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.26941 of 2018

S.Revathi

.. Petitioner

Vs

The State Rep by
Additional Superintendent of Police,
CBCID Villipuram Range,
Villipuram.

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to direct the trial court to alter the charges by including Sec.302 of IPC and the provisions of the SC/ST Act 1989 and forward the case to the special court under the SC/ST Act for trial.

For Petitioner : Mr.R.Sankarasubbu,
for K.C.Karl Marx

For Respondent : Mr.C.Raghavan
Government Advocate (Cr1. Side)

O R D E R

This petition has been filed for a direction to the trial Court to alter the charges by including Section 302 of IPC and the provisions of the SC/ST Act, 1989 and forward the case to the Special Court.

2. The learned counsel for the petitioner would submit that the petitioner is the defacto complainant and based on the complaint given by her, the Sub-Inspector of Police, Nellikuppam, Cuddalore District, registered an FIR in Crime No.269 of 2015, under Section 174 (1) of Cr.P.C. The investigation in this case was transferred to the file of the CBCID, Villipuram Range. During the course of investigation, the FIR was altered and a final report also came to be filed for an offence under Sections 218, 330, 343, 348 and 304(ii) of IPC as against A1 and under Sections 330 and 304(ii) IPC as against A2 and A3.

3. The learned counsel for the petitioner would submit that on the materials placed by the respondent police, the Court below ought to have added the offence of Section 302 of IPC. That apart, since the petitioner belongs to the Scheduled Caste community, the relevant provisions of SC/ST Act 1989, must also have been added and the Court below ought to have forwarded the final report to the Special Court.

4. The learned counsel for the petitioner would submit that the case is at the PRC stage and the committal is yet to be made. In the meantime, the petitioner filed a petition under Section 216 of Cr.P.C., before the Committal Court seeking for altering the charges by adding Section 302 of IPC and also the relevant provisions under the SC/ST Act 1989. This petition has been returned by the Court below on the ground of maintainability. This has been challenged by the petitioner before this Court.

5. Admittedly in this case, the proceedings are only at the stage of Section 207 of Cr.P.C., wherein the Court below has to give the copies of the documents to the accused persons. Thereafter, the case has to be committed before the concerned Court under Section 209 of Cr.P.C. The concerned Court to which the case has to be committed, has to apply his mind on the materials placed before it and frame appropriate charges against the accused persons. In this case, admittedly, that stage has not been reached.

6. In the considered view of this Court, the alteration of charges cannot be done by the Committal Court. Therefore, the Court below has rightly returned the petition filed by the petitioner seeking for alteration of charges.

7. The power of alteration of charges is dealt with under Section 216 of Cr.P.C. A very wide power has been given to the Court to alter, add or delete any charges till the stage of passing the final judgment in the case. Traditionally, a view was taken to the effect that such alteration of charges is within the exclusive domain of the Court and no petition is maintainable either on the side of the prosecution or on the side of the complainant, seeking for alteration of charges. As a March of law the Hon'ble Supreme Court, in the judgment reported in 2016 2 MLJ Criminal Page. 294, for the first time gave a leverage for the parties to file a petition for alteration of charges by bringing to the notice of the Court, the materials based on which the Court has to apply its mind for the purpose of altering charges. Even though, this was not given as an absolute power, the purpose of filing a petition for alteration of charges is more in the nature of an information that is

provided to the Court and ultimately, it is for the Court to decide whether the charges requires alteration/addition based on the materials placed before it. Therefore, the wide discretionary power that was given to the Court under Section 216 of Cr.P.C., is left intact and any petition that is filed before the Court is taken to be, at the best an information provided before the Court.

8. In this case admittedly, the case has not been committed. Therefore, the question of framing of charges has not been reached. Therefore, the Court below has rightly returned the petition filed by the petitioner. This Court does not find any illegality on the part of the Court below in returning the petition filed by the petitioner.

9. After the case is committed to the concerned Court, it is always left to the petitioner to place the materials before the said Court in order to bring to the notice of the Court that the final report ought to have been filed by the respondent police by adding Section 302 of IPC and also the relevant provisions under the SC/SCT Act 1989. Even if no materials are available at the time of framing of charges to add the above said offences, the Court to which the case is committed retains this power to alter the charges at any time before the judgment is pronounced, based on the evidence that comes on record during the course of trial.

10. In view of the above this Criminal Original Petition is disposed of by giving liberty to the petitioner to file appropriate petition for alteration of charges at the relevant point of time as indicated in this Order. The Chief Judicial Magistrate, Cuddalore is directed to issue the copies to the accused persons and commit the case before the appropriate Court within a period of one month from the date of receipt of a copy of this order.

11. With the above direction, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar (Audit)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Chief Judicial Magistrate,
Cuddalore.
2. Additional Superintendent of Police,
CBCID Villipuram Range,
Villipuram.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Karl Marx K.C, Advocate, S.R.No. 81059(20/12/2018)

Crl.O.P.No.26941 of 2018

GN(30/11/2018)



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