

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.1823 of 2016

ORDER:

This revision is arising out of Order dated 21.06.2016 passed in Crl.M.P.No.664 of 2016 in C.C.No.880 of 2012 by the II Additional Chief Metropolitan Magistrate, Vijayawada.

2. The revision petitioner is the accused in C.C. No.880 of 2012. The Police, Penamaluru Police Station, Vijayawada City filed charge sheet against the revision petitioner under Sections 509 and 323 IPC and deleted 509 IPC.

3. The prosecution has filed Crl.M.P.No.664 of 2016 for alteration of charges under Section 216 Cr.P.C. by adding of charges under Sections 452 and 354 IPC against the accused, basing on the 161 CrPC statements of LWs.1 to 9. The trial Court on consideration of 161 Cr.P.C. statements of the witnesses has altered the Section of law by adding Sections 452 and 354 IPC against the accused. Aggrieved by impugned order, this revision is filed.

4. Heard the learned counsel for the petitioner and learned Public Prosecutor.

5. Before advertng to further, it is appropriate to refer to Section 216 Cr.P.C., which reads 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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.*

6. In view of the above procedure the court can alter or add to charge basing on the material on record at any stage of the

7. The trial Court has altered the charge basing on the 161 Cr.P.C. statements of the witnesses, more particularly, relying on the statement of LW.1. The statement of LW.1 under Section 161 Cr.P.C. clearly shows that the accused made galata with an intention to outrage her modesty by tearing her jacket with force by touching her body with hands. The act of the accused clearly indicates that he has committed the offence under Section 354 IPC. It is further revealed that he came to the house with an intention to

commit an offence, i.e., outrage of modesty, which comes under Section 452 IPC.

8. Since there is material for the court to frame additional charges for the offence under Section 354 and 451, as per Section 216 Cr.P.C charge against the accused can be framed.

9. In view of the facts and circumstances of the case, I find no illegality or infirmity in the order passed by the trial Court. Therefore, there are no grounds to interfere with the order passed by the trial Court.

10. Finding no merit in the instant petition, the same is dismissed accordingly.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 20-12-2018

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