

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

CRM-M No. 31198 of 2017

DATE OF DECISION :- August 24, 2018

Smt. Bhateri Devi

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Mukesh Rao, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Vikas Bishnoi, Advocate for respondent no.2.

The complainant is aggrieved by order dated 4.9.2014 passed by Chief Judicial Magistrate, Hisar vide which an application moved by complainant for framing of charge under Sections 452, 354, 506 IPC and Section 3 of SC ST Act was dismissed as well as order dated 18.5.2017 passed by Additional Sessions Judge, Hisar vide which the Revision Petition filed against the said order had been dismissed. Now the complainant has approached this court challenging these two orders.

Briefly stated the facts of the case as per prosecution story are that F.I.R. in question was registered for offences under Sections 420, 406, 452, 354, 506 IPC and 3 of SC and ST Act at the instance of Smt. Bhateri Devi. However, during investigation of the case offences under Sections

452, 354, 506 IPC and Section 3 of SC and ST Act were deleted and challan was filed against accused Mahavir Parshad for offences under Sections 420, 406 IPC.

The complainant feeling aggrieved had moved an application for framing of charge for offences under Sections 452, 354, 506 IPC and 3 of SC and ST Act which was declined by the trial Court.

Learned Additional Sessions Judge, Hisar in the order passed by her has observed that during the investigation conducted by Sh. Jai Parkash DSP offences under Sections 3 of SC and ST Act and Section 452, 354, 506 IPC were not found to have been committed and challan was filed only under Section 420 and 406 IPC and in absence of any additional material the version of the prosecution is to be relied upon. It was further observed that contentions of complainant regarding affidavit of Naresh Kumar are not of much relevance since report under Section 173 Cr.P.C. does not reflect the deletion of offence under Section 3 of SC/ST Act and 354, 452 and 506 IPC on the basis of affidavit by said Naresh Kumar. For the said reason the petition stands dismissed. The revisional Court agreed with the observations of the trial Magistrate. Both these orders have been challenged by way of filing the present revision petition.

I have learned counsel for the petitioner, learned counsel for respondent no. 2 and learned State counsel besides going through the record.

I do not find any merit in the petition. The orders passed by the Courts below are well reasoned based on proper appraisal and appreciation of evidence and correct interpretation of law.

A finding has been recorded by learned Chief Judicial Magistrate, Hisar to the effect that no offence under Section 3 of the SC/ST Act and Sections 452, 354, 506A IPC is made out. Only for the reason that such offences were there in the F.I.R. does not go to show that the accused are to be challaned for all the offences mentioned in the F.I.R..

After registration of the F.I.R. the matter is investigated during the course of which investigating agency collects evidence oral as well as documentary with regard to commission of offences finding out the culprits and the offences which are disclosed against the culprits. In this case during course of investigation the investigating agency did not find that accused had committed offence under Section 3 of SC/ST Act and Section 452, 354, 506 IPC as such accused were not challaned for those offences. Learned Chief Judicial Magistrate, Hisar on consideration of the matter framed charge for offences under Sections 420, 406 IPC against the accused. Though the complainant had moved an application that charge for offences under Sections 452, 354, 506 IPC and Section 3 of SC/ST Act be also framed but the trial Court did not find merit in that application, of course not finding sufficient material available on record to frame charge for those offences. The Court of Additional Sessions Judge, Hisar while hearing revision petition agreed with the findings recorded by Chief Judicial Magistrate, Hisar.

Section 240 Cr.P.C. deals with framing of charge in a trial of warrant cases by Magistrates. It provides that if upon such consideration, examination if any and hearing, the Magistrate is of the opinion that there is ground of presuming that the accused had committed an offence triable

under this Chapter (Chapter 14 of Criminal Procedure Code) which such Magistrate is competent to try and which in his opinion could be adequately punished by him, he shall frame in writing of charge against the accused.

Here the Chief Judicial Magistrate has framed the charge for the offences which in his opinion the accused had committed and conducted.

Learned counsel for the petitioner has referred to various authorities 'Anant Parkash Sinha @ Anant Sinha versus State of Haryana and another 2016(2) R.C.R (Criminal) 327', 'State of Gujarat versus Girish Radhakrishnan Varde 2014(1) R.C.R (Criminal) 857', 'Dinesh Tiwari versus State of Uttar Pradesh 2014(4) R.C.R (Criminal) 36', 'Nitya Dharmananda @ K. Lenin and another versus Sri Gopal Sheelum Reddy and another in Criminal Appeal No. 2114 of 2017' of Hon'ble Supreme Court. But those authorities are not applicable to the facts and circumstances of the present case.

Learned State counsel has submitted that the prosecution has examined almost all the prosecution witnesses and trial is at the fag end.

I do not find any merit in the petition, therefore, the same stands dismissed.

**(H.S. MADAAN)
JUDGE**

August 24, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No