

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

**CRM-M No.9718 of 2015 (O&M)
Decided on: 06.04.2018**

Sher Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. R.S. Mamli, Advocate
for respondents No.2 to 9.

ARVIND SINGH SANGWAN J.

Challenge in this petition is to the order dated 05.03.2015 passed by the trial Court vide which the application filed by the petitioner for amendment of charges has been dismissed as well as the order dated 17.03.2015 passed by the Revisional Court vide which the revision filed by the petitioner was also dismissed.

Brief facts of the case are that FIR No.190 dated 20.05.2009 under Sections 323, 506 read with Section 34 of the Indian Penal Code (in short 'IPC') was got registered by Sher Singh – petitioner with the allegation that he is a labourer by profession and on 18.05.2009, he was feeding the pigs at his house with watermelon after cutting the same with knife and in the meantime, the accused Ravinder abused him and rebuked him for showing knife. Later in the evening, Bhagat Ram and Jogi again abused him in a drunken state in the name of his caste and then, they entered into a scuffle. On hearing the noise,

Kuldeep, Ravinder, Prem Pal, Nand Lal, Sushil, Rakesh and Amit Kumar carrying sticks in their hands came there and gave beatings to the petitioner, his brother – Ashok Kumar and son – Nirmal Singh. Thereafter, the villagers rescued them.

After completion of investigation, report under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was presented on 10.07.2009 and the trial Court vide order dated 01.05.2010 framed charges against the accused persons under Sections 323, 324 read with Section 34 IPC to which they did not plead guilty and claimed trial.

After the recording the statement of brother of the petitioner namely Ashok Kumar as PW1, the petitioner moved an application for alteration of charge under Section 216 Cr.P.C. with a prayer to frame charge under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short 'the Act').

The respondents filed reply to the application and contested the same.

Thereafter, the trial Court vide impugned order dated 10.07.2013 dismissed the application holding that charges have been framed after due consideration of the documents attached with the report under Section 173 Cr.P.C. and after framing of the charge no new evidence has come on record for alteration of the charge. The petitioner filed revision before the Court of Additional Sessions Judge, Yamuna Nagar and the same was also dismissed vide impugned order dated 10.11.2014.

Counsel for the petitioner has submitted that the investigating agency, under the influence of the private respondents did not submit the report under Section 173 Cr.P.C. by adding Section 3(i)(x) of the Act despite the fact that the statement of the complainant was recorded on 20.05.2009 to the effect that the accused persons threatened and abused the complainant in the name of their castes. It is further submitted that the trial Court has framed the charge against the accused persons only under Sections 323, 324, 506 read with Section 34 IPC, though, the offence under Section 3(i)(x) of the Act is made out and, therefore, the application for alteration of the charge under Section 216 Cr.P.C. was maintainable and, thus, the same has been wrongly dismissed.

In reply, counsel for the respondents has submitted that the petitioner has earlier filed CRM-M No.39750 of 2014 with the similar prayer and the following order was passed on 21.11.2014:-

“Naresh Kumar Sanghi, J.(Oral)

Learned counsel for the petitioner prays for withdrawal of the present petition to enable the petitioner/complainant to move fresh application before the learned trial court if more evidence appears on record to show that the private respondent had committed the offence punishable under Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Dismissed as withdrawn with the liberty aforesaid.

November 21, 2014

***(Naresh Kumar Sanghi)
Judge”***

Counsel for the respondents has further argued that no fresh evidence has come on record and, therefore, there was no

occasion for the petitioner to move a fresh application before the trial Court. It is also submitted that from the perusal of the FIR, the ingredients to attract Section 3 (i)(x) of the Act are not made out.

The Revisional Court while passing the impugned order dated 17.03.2015 has recorded the following findings:-

“6. Undisputedly, the offence punishable under Section 3(1)(X) of the Act is triable by the Special Court i.e. Court of Sessions. Learned Magistrate could not frame the charge for the offence punishable under the special act, even if the necessary ingredients were made out. At the most, learned Magistrate could exhaust the option as available under Section 323 Cr.P.C., hence the application for amendment of charge is not found legally maintainable.

7. Even otherwise, the allegations of using the specific words are general and vague and are not attributed to any person in specific. Moreover, in the testimony of complainant, Sher Singh, it is nowhere mentioned that such words were used within the public gaze to attract the provisions of Section 3(1)(X) of the Act. The trial is going on with respect to FIR registered on 20.05.2009. It is matter of record that another application for amending the charge was also filed, which was dismissed by learned Magistrate, revision against which was dismissed by the learned Additional Sessions Judge and the petition before the Hon'ble High Court of Punjab and Haryana was withdrawn with liberty to file the application afresh if new evidence come on record. The allegations made in the testimony of PW3 Sher Singh are not sufficient enough to satisfy the Court to presume that the accused had committed the alleged offence. No doubt, it can be inferred from the deposition of PW3 Sher Singh that some persons had come at the spot, but it cannot be

held that the words were in fact used in the presence of those persons. More so, the allegations qua Section 3(1) (X) of the Act have been found baseless during the investigation thoroughly carried out by DSP.

8. *It is not out of place to mention here that scope of the revisional court is limited and only in case of glaring illegality and perversity, such revisional jurisdiction can be exercised to meet the ends of justice or to avoid miscarriage of justice. Learned counsel for the revisionist failed to point out any glaring illegality in the well-reasoned order passed by the learned Magistrate after applying his mind to relevant facts and evidence on record. In such situation, the Court regrets its inability to interfere in the impugned order and the conclusion arrived at by the learned Magistrate.*

9. *In ultimate, analysis, the instant revision fails and is hereby dismissed. Consequently, the order passed by the learned Magistrate is affirmed. Parties are directed to appear before the learned trial Court on the date fixed.*

10. *Needless to mention here that the observations made hereinabove shall not influence the mind of learned Magistrate during the trial of the case as the same have been recorded only to decide the instant revision petition. Copy of this order be sent to the concerned trial Court. File after needful be consigned to the records.”*

After hearing counsel for the parties, I find no merit in the present petition for the following reasons:-

(a) The FIR was registered on 20.05.2009 and the report under Section 173 Cr.P.C. was submitted on 10.07.2009 under Sections 323, 506 read with Section 34 IPC. The petitioner, at that stage, never challenged the

report under Section 173 Cr.P.C. or filed any application for further investigation to add the offences punishable under Section 3(i)(x) of the Act.

(b) The charges were framed against the accused persons on 26.04.2010 under Sections 323, 506 read with Section 34 IPC and the charge-sheet was issued against the present petitioner/accused on 01.05.2010 under Sections 323, 324 read with Section 34 IPC. The petitioner never availed the remedy of filing the revision against framing of the charge and, thereafter, the prosecution evidence was started.

(c) The petitioner has even earlier filed CRM-M No.39750 of 2014 which was dismissed as withdrawn on 21.11.2014 and no relief for alteration of the charge was granted to the petitioner except that the petitioner can move fresh application if some more evidence come on record to show that the offence punishable under Section 3 of the Act is made out. The statement recorded by the petitioner as PW3 and that of his brother – Ashok Kumar as PW1 is nothing but reiteration of the version given in the FIR and no fresh evidence has come on record.

(d) Both the Courts below have concurrently held that after framing of the charge, no new evidence has come on record to support the version of the complainant for alteration of the charge and it is also held by the Courts

below that the order framing charge has become final as the petitioner has not challenged the same.

(e) The Courts below has further recorded a finding that on appreciation of evidence of PW1 and PW3 that there are contradiction in their statements regarding the words spoken by the accused persons for using offensive language regarding their castes.

Though, it is well settled principle of law that the Courts have wide power to alter the charge in exercise of powers conferred under Section 216 Cr.P.C., at any stage of the trial, however, after going through the impugned orders and the documents relied upon by the petitioner especially the statement of PW1 – Ashok Kumar and PW3 – Sher Singh, I find that no grounds are made out for altering the charges as prayed for by the petitioner, therefore, finding no illegality or irregularity in the impugned orders passed by both the Courts below, the present petition is dismissed.

Since, the trial Court was directed not to pass the final order during pendency of the present petition vide order dated 23.07.2015, therefore, considering the fact that the FIR pertains to the year 2009, the trial Court is directed to decide the case expeditiously, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

06.04.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No