

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

CRR No.2085 of 2016 (O&M)
Date of Decision: July 17, 2018

Dharambir

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.S. Momi, Advocate
for the petitioner.

Mr. P.P. Chahar, DAG Haryana.

Mr. J.S. Mehndiratta, Advocate
for respondents No.2 and 3.

JAISHREE THAKUR, J.

1. This is a criminal revision that has been filed against the order dated 13.05.2016 passed by the Additional Sessions Judge, Sonapat, whereby the application filed by the petitioner-complainant under Section 216 of Code of Criminal Procedure (for short 'the Cr.P.C.') for amendment in the charges, by way of framing the charge under Section 305 of Indian Penal Code (for short 'the IPC') instead of 306 of IPC and for further framing the charge under Section 376 of IPC and Sections 6, 8, 12 of the POCSO Act read with Section 120-B of IPC against the accused persons, has been dismissed.

2. In short, the facts of the case are that FIR No.452 dated

05.09.2015 came to be registered under Section 306 read with Section 34 of IPC at Police Station Sadar, Sonipat against respondents No.2 and 3 herein on the complaint of petitioner-complainant that on 05.09.2015 at around 05.00 his daughter Deepika committed suicide due to threatening given by Hanni and his mother Suman (respondents No.2 and 3 herein). It was also alleged that when his daughter went to South Point School tour to Delhi, accused Hanni also reached there and did obscene act with his daughter. When his daughter Deepika returned back, she disclosed this incident to her mother, on which they narrated this matter to Hanni's family, but instead of rebuking her son, Hanni's mother insulted Deepika. Hanni's mother also went to South Point School and insulted his daughter Deepika. Deepika was very upset with the behaviour of Hanni and his mother Suman, compelling her to the extreme step of committing suicide..

3. During the course of investigation, a suicide note was recovered from the lower/trouser worn by the deceased at the time of her death, which was sent to FSL for verification of handwriting of the deceased and as per the report of Forensic Science Laboratory, the handwriting on the suicide note is of the deceased. After completing the investigation, final report under Section 173 Cr.P.C. was filed in the court against respondents No.2 and 3 under Sections 306/34 of IPC and thereafter, the trial court framed the charges under Sections 306/34 of IPC by an order dated 11.12.2015. Thereafter, the petitioner-complainant moved an application under Section 216 Cr.P.C. for amendment of charge on the ground that since the deceased in the instant case was less than 18 years of age, she was a child, and therefore, charge under Section 305 of IPC is required to be

framed instead of Section 306 of IPC, but the said application came to be dismissed on 27.01.2016. Thereafter, a supplementary challan was filed by the police under Section 173(8) of the Cr.P.C containing documents, birth certificate of Deepika (deceased) and statement of her mother Ishwanti. After that, the petitioner-complainant filed another application under Section 216 of Cr.P.C. for amendment in the charges, by way of framing the charge under Section 305 of IPC instead of 306 of IPC and for further framing the charge under Section 376 of IPC and Sections 6, 8, 12 of the POCSO Act read with Section 120-B of IPC against the accused persons, which application came to be dismissed by the impugned order dated 13.05.2016.

4. Mr. S.S. Momi, learned counsel appearing on behalf of the petitioner argues that it is an admitted fact on the case file the date of birth of deceased Deepika was 09.11.2000 and on the date of the occurrence, the deceased was minor, aged about 14 years, at the time when she committed suicide. The age of the deceased is mentioned as 14 years on the postmortem report. It is contended that as per the suicide note, the accused committed “*jabardasti*” with the deceased. Meaning thereby, the deceased was molested and sexually abused and as such, charges under Sections 305, 376 of IPC and Sections 6, 8, 12 of POCSO Act read with Section 120-B of IPC are made out against the accused.

5. Mr. J.S. Mehndiratta, learned counsel appearing on behalf of respondents No.2 and 3 argues that there is nothing on record to amend the charges already framed. It is submitted that the earlier application filed by the learned Public Prosecutor under Section 216 of Cr.P.C. for amendment

of charge has already been dismissed by the trial court and the suicide note was already on the file at the time of framing of charges in the present case. It is contended that in the earlier application moved under Section 216 Cr.P.C. no prayer for framing the charges under Section 376 of IPC and Sections 6, 8, 12 of POCSO Act read with Section 120-B of IPC was made except for framing the charge under Section 305 IPC.

6. I have heard learned counsel for the parties, apart from perusing the record.

7. On the basis of the complaint filed by the petitioner-complainant and the investigation done by the police, final report under Section 173 Cr.P.C. was filed under Section 306 read with Section 34 of IPC. The earlier application moved under Section 216 Cr.P.C. came to be dismissed on 27.01.2016 by the trial court, while observing that there is no material pertaining to date of birth of the deceased in the form of birth certificate or in the statement of her father has been found. Thereafter, a supplementary challan came to be filed under Section 173(8) Cr.P.C. containing documents, date of birth of deceased-Deepika and statement of her mother. Another application filed by the petitioner-complainant for amendment of charges by way of framing the charge under Section 305 of IPC instead of 306 of IPC and for further framing the charge under Section 376 of IPC and Sections 6, 8, 12 of the POCSO Act read with Section 120-B of IPC against the accused persons came to be dismissed by the trial court by the impugned order dated 13.05.2016, while observing as under;

“In the present case the accused have been charge sheeted under Section 306 read with Section 34 of IPC.

In the complaint (sic.) as well as in the suicide note there is no specific allegation regarding commission of rape upon the deceased. Police after thorough investigation submitted the challan u/s 306 read with section 34 IPC. Earlier application under Section 216 of Cr.P.C., for framing charge under Section 305 of IPC was dismissed by the court observing therein that no material pertaining to the date of birth of deceased in the form of birth certificate or age mentioned in the statement of her father was found. Certainly, after dismissal of the said application birth certificate and statement of mother of deceased mentioning age of deceased has been submitted in the form of supplementary papers but, the prosecution witnesses in the present case are yet to be examined and as such, at this stage, from the material available on record prima facie a case of suicidal death is made out. Suicide note relied upon by the prosecution prima facie make out an offence u/s 306 of IPC. Without commenting on the merits of the case, prima facie no case is made out to amend the charge at this stage as no material prosecution witness has been examined. Accordingly, the application is dismissed.....”

8. Section 305 of IPC deals with the offence of abetment of suicide of child or insane person whereas, Section 306 of IPC deals with the offence of abetment of suicide in other cases. Certainly, if any person under eighteen year of age, any insane person, any delirious person, any idiot or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be liable to be punished under Section 305 of IPC. Section 216 of Cr.P.C. authorizes the court to alter or add to any

charge at any time before judgment is pronounced.

9. In the case in hand, in the FIR, the petitioner-complainant has mentioned that deceased-Deepika was studying in the 10th standard. In the postmortem report also, the age of the deceased has been mentioned as 14 years. The earlier application moved under Section 216 Cr.P.C. was dismissed on 27.01.2016 on the ground that no material pertaining to the date of birth of the deceased was found. Thereafter, a supplementary challan came to be filed *inter alia* containing the date of birth certificate of the deceased, however, the another application filed under Section 216 Cr.P.C. for amendment of charges has been dismissed by the trial court while observing that a case of suicidal death is made out and the suicide note prima facie makes out an offence under Section 306 IPC. However, the trial court has not said anything about the date of birth certificate of the deceased, submitted in the form of supplementary challan. So far as the question of framing the charges under Section 376 of IPC and Sections 6, 8, 12 of the POCSO Act read with Section 120-B of IPC against the accused persons is concerned, there are no specific allegations of rape levelled either in the complaint or in the suicide note. However, so far as question of amending the charge under Section 305 read with Section 34 IPC is concerned, date of birth certificate of deceased-Deepika (Annexure P-15) clearly shows that the deceased was having date of birth of 09.11.2000 whereas, the alleged occurrence has taken place on the intervening night of 04/05.09.2015. It means, the deceased was less than eighteen years of age, at the time when she committed the suicide. The trial court in the impugned order dated 13.05.2016, though considered the fact that it is a case of

suicidal death, however, did not consider the date of birth certificate of the deceased, which was submitted by the police in the form of supplementary statement, as per which, the deceased was less than eighteen years of age, while she committed suicide.

10. Under these peculiar facts and circumstances of the present case, prima facie, at this stage, a case under Section 305 read with Section 34 of IPC is made out against the accused persons and the charge is required to be altered accordingly.

11. In view of the above, the criminal revision in hand is partly allowed and the impugned order passed by the trial court is set aside to the above extent only.

12. Needless to say, anything observed or said by this court hereinabove shall have no affect on the merits of the case.

July 17, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No