

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 788 of 2019

Order Reserved on : 06.08.2019

Order Delivered on : 24.10.2019

- Ajit Kumar Nishad S/o Nidhi Nishad Aged About 22 Years R/o Village Tadola, Taluka- Pussore, District : Raigarh, Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through District- Magistrate, Raigarh, Tahsil and District- Raigarh, Chhattisgarh

---- Respondent

For Applicant	:	Shri Amit Sharma, Adv.
For Respondent/State	:	Shri Priyank Rathi, PL

Hon'ble Smt. Justice Rajani Dubey

C.A.V. ORDER

Heard on admission.

The present revision arises out of the impugned order dated 07.06.2019 passed by the Learned Special Judge(SC and ST Prevention of Atrocities Act), Raigarh, District – Raigarh, in Special Case No. Atrocities Act/11/2018, whereby the learned Court below has altered the charge and again fixed this case for re-examining of three witnesses.

2. Brief facts of the case are that complainant lodged a report against the applicant that the applicant on false pretext of marriage committed sexual intercourse with the complainant/prosecutrix. The

police has registered the case under Section 376 of the IPC and Section 3(1)(w)(2) and 3(2)(v) of the Prevention of (SC & ST) Atrocities Act, 1989 and charge-sheet has been filed against the applicant.

3. Before trial Court, on 07.06.2019, the case was fixed for judgment, but, on that date, learned Special Judge, in addition, has framed the charges under Section 6 of POCSO Act and fixed the case for re-examination of prosecutrix, her mother and father. Hence, this revision.

4. Learned counsel for the applicant submits that the order passed by the Court below is perverse and contrary to the statements and evidence on record. The learned Court below has failed to see that there are no ingredients under Section 6 of POCSO Act, in this case, therefore, impugned order dated 07.06.2019 is liable to be set aside.

5. Learned counsel for the State supported the impugned order and submitted that the Court has ample powers to alter or amend the charge under Code of Criminal Procedure and he has also placed reliance in the matter of Hon'ble Apex Courts judgment dated 12.02.2019, passed in CRA No.1144/2009, Mala Singh and ors. Vs. State of Haryana.

6. Heard counsel for the parties and perused the material on record including the impugned order.

7. It is clear from the documents produced before this Court that accused was facing trial under Section 376 of the IPC and Section 3(1)(w)(2) and 3(2)(v) of the Prevention of (SC & ST) Atrocities Act, 1989 and the trial Court has amended the charges at judgment stage and fixed the case for re-examination of prosecutrix, her mother and father.

8. Section 216 and 217 of the Code of Criminal

Procedure provides 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.”

“217. Recall of witnesses when charge altered. - *Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-*

(a) to recall or re- summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.”

9. The Hon'ble Apex Court has also held in the matter of Mala Singh Vs. State of Haryana, that “The Criminal Procedure Code gives ample power to the courts to alter or to amend a charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of

meeting it and putting forward any defence open to him, on the charge finally preferred against him.”

10. In the light of above discussion, the trial Court has not committed any error in framing or altering the charges against the accused/applicant. Therefore, this Court does not see any illegality or perversity in the findings recorded by both the Courts below.

11. However, the trial Court is directed to dispose of the main petition on cooperation by both the parties as early as possible preferably within a period of six months from the date of hearing.

12. Accordingly, the revision is dismissed.

(Rajani Dubey)
JUDGE