

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

CRM-M-7070 of 2017.

Decided on:- July 23, 2019.

Anita.

.....Petitioner.

Versus

Sunil Kumar and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. J.P. Sharma, Advocate for the petitioner.

Mr. Sandeep Verma, Advocate for respondents No.1 to 4.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

HARI PAL VERMA, J.

The petitioner has filed the present petition under Section 482 Cr.P.C. impugning the order dated 12.12.2016 passed by learned Judicial Magistrate 1st Class, Rewari and the judgment dated 17.02.2017 passed by learned Additional Sessions Judge, Rewari.

Vide impugned order dated 12.12.2016, learned Magistrate had dismissed the application under Section 216 Cr.PC filed by the prosecution seeking alteration of charge.

Similarly, vide impugned judgment dated 17.02.2017, the revision petition filed by the petitioner-complainant against the order dated 12.12.2016 passed by learned Magistrate, was dismissed by learned Additional Sessions Judge, Rewari.

Briefly stated, the petitioner had got an FIR No.420 dated 21.12.2008 under Sections 323, 324, 406, 498-A and 506 IPC registered

against respondents No.1 to 4 at Police Station Model Town, Rewari, wherein the investigation was conducted and police submitted the Challan against accused-respondents No.1 and 2, namely, Sunil Kumar and Lalita Yadav, whereas respondents No.3 and 4, namely, Kanwar Singh and Rakesh were placed in column No.2.

Learned counsel for the petitioner has argued that though the aforesaid FIR was registered under Sections 323, 324, 406, 498-A and 506 IPC, but the police has submitted Challan under Sections 498-A, 406, 323 and 506 IPC.

The trial Court has framed charge against respondents No.1 and 2 for offence under Sections 323, 406, 498-A and 506 read with Section 34 IPC. Since respondents No.3 and 4 were placed in column No.2, on the basis of an application under Section 319 Cr.PC moved by the prosecution after recording the statement of the petitioner, who was examined as PW1, the trial Court vide order dated 07.10.2015 summoned respondents No.3 and 4 to face trial as additional accused. Respondents No.3 and 4 were also charge sheeted for offence under Sections 323, 406, 498-A and 506 read with Section 34 IPC. However, during the trial, Dr. T.C. Tanwar was examined as PW2 and he had deposed that injury No.1 was caused by a sharp edged weapon and other two injuries were caused by blunt weapon. Therefore, on the basis of statement of Dr. T.C. Tanwar, the offence under Section 324 IPC was clearly made out against all the accused and they have committed the offence under Section 324 IPC in furtherance of their common intention as Section 34 IPC has been added for each charge. Accordingly, the petitioner had moved an application under Section 216 Cr.PC for alteration of the charge on

24.02.2016 so as to frame the additional charge under Section 324 IPC, but vide order dated 12.12.2016, learned Magistrate had dismissed the said application. Similarly, learned Additional Sessions Judge had also dismissed the criminal revision in a very mechanical and cryptic manner.

He has further argued that accused Rakesh, who was attributed the injury with knife, was not available before the trial Court at the time when the charges against accused Sunil Kumar and Lalita Yadav were framed and subsequently, when accused Kanwar Singh and Rakesh were summoned by the trial Court vide order dated 30.10.2015, the charge under Section 324 IPC should have been framed against all the accused, as all the four accused including Rakesh, who caused knife injury to the petitioner were available before the trial Court.

He has further contended that giving the probable time of injuries is not exact science and the variation given by the doctor is not fatal on the prosecution and the same cannot be considered at the time of framing of the charge. The offence under Section 324 IPC is clearly made out against all the accused.

On the other hand, learned counsel for respondents No.1 to 4 has argued that there is no illegality in the orders passed by the Courts below. The trial Court has not taken cognizance of offence under Section 324 IPC at the time of framing of charge and this offence cannot be inserted in the charge sheet by moving an application under Section 216 Cr.P.C.

I have heard learned counsel for the parties.

On the date i.e. 05.08.2010, when the charge was framed by the trial Court, the medico-legal report showing the injuries on the person of

petitioner-complainant was available before the trial Court. Therefore, it cannot be accepted that new evidence has come on record. Even Dr. T.C. Tanwar, who appeared before the trial Court as PW2, was not certain about the kind of weapon used when injury No.1 was caused.

Interestingly, Dr. T.C. Tanwar (PW2) had deposed before the trial Court that injury No.1 was caused within 12 hours, whereas injury No.3 was caused within 24 hours and had not supported the version of complainant Anita (PW1) with regard to assault on her person at about 07.00 P.M. on 20.12.2008. Therefore, the Courts below have rightly rejected the prayer of the complainant as there is no explanation as to why the injury so caused on the person of injured at the same time could be of different duration. Since the statements of petitioner-complainant as PW1 and Dr. T.C. Tanwar as PW2 are at variance, the Courts below have rightly rejected the application for alteration of charge.

Thus, this Court finds that there is no merit in the present petition and the same is, accordingly, dismissed.

It is made clear that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case and the trial Court shall decide the same without being influenced with these observations in any manner.

July 23, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No