

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

245

CRR-1016-2018 (O & M)
Date of Decision:01 July, 2019

PAVNESH KUMAR ALIAS RAHUL

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. M.K. Arya, Advocate
for the petitioner.

Mr. Harsimar Singh Sitta, AAG, Punjab.

MANOJ BAJAJ, J.

This criminal revision has been preferred by the accused namely Pavnesh Kumar @ Rahul to challenge the order dated 07.03.2018, passed by the learned Additional Sessions Judge, Ludhiana whereby it has proceeded to allow the application under Section 216 Cr.P.C. for alteration of charge thereby amending the previous charge of offence punishable under Section 306 IPC to the offence punishable under Section 302 IPC. The prosecution arises from case FIR No.193 dated 02.12.2014 registered under Section 307 IPC at Police Station Division No.4, Ludhiana.

On the basis of statement given by Sunil Kumar an FIR bearing

No.193 dated 02.12.2014 was registered and the same is extracted below:-

“Stated that I am studying B.Tech. on private basis, doing Mechanical Engineering from AIIT Institute, Dugri, Ludhiana. We are five brothers and sisters in total. I have four sisters. My elder sister Reshma Rani got married in the year 2000 with Sachida Nand s/o Sham Lal, resident of Village Mavai Damiana, Tehsil Hasanganj, District Uthau, U.P. They have a daughter namely Simran who is aged 13 years. My brother-in-law and my sister are residing in our aforesaid house since their marriage. My brother-in-law Sachida Nand Tyagi, who was working as Senior Accountant with Gaurav Export, Dhandari Kalan, Ludhiana, on 29.11.2014, before going to a marriage at his village in U.P., went to meet his maternal uncle Suresh Kumar at his residence in Village Jodhewal at about 8.30 PM from his home on his motorcycle bearing no.PB-10-ED-9679 Make Splendor. Thereafter at about 10.00, he was sitting at the Railway Station along with his maternal uncle as the train had got delayed. At that time, Pavnesh Kumar alias Rahul s/o SandeepKumar, who is son of aunt (Massi) of Sachida Nand Tyagi and is residing in a rented accommodation near Kali Mata Mandir, Sandhu Nagar, Ludhiana, came there along with two unknown persons, who demanded money in respect of committees from my brother-in-law Sachida Nand, upon which my brother-in-law handed over the keys of the motorcycle and told him to keep the motorcycle with him till he comes back and they will settle the account later on. However, they took my brother-in-law and motorcycle along with them from the Railway Station, Ludhiana. In this regard, same information was given to the Police Station, Railway Station, Ludhiana. Today, on 2.12.14, at around 12.30 AM at night, my sister received a message on her mobile

no.98148-09679 that you take away Sachida Nand otherwise he would die and he is lying in the fields on the back side of Green Land. Thereafter I along with my sister and relatives went to the spot, where, on the boundary of fields at the back side of Green Land School, my brother-in-law was sitting, whose hands and feet were tied with a rope. We took him to Civil Hospital for treatment but as the condition of my brother-in-law was serious, he was referred to DMC Hospital, where he is under treatment. When we reached at the spot, my brother-in-law told only this much that Rahul and two other persons along with him have poured medicine in his mouth and thereafter he fell unconscious. The cause of enmity is this that my brother-in-law had monetary transactions in respect of Committee with Pavnesh Kumar alias Rahul s/o his Massi. On account of this enmity, Parvesh Kumar alias Rahul and his companions with an intention to kill have forcefully poured poisonous medicine. Action be taken against them. Statement has been got recorded. It has been read and is correct. -sd- Sunil Kumar”

After registration of the FIR, the investigation was conducted by the police. Since the victim namely Sachida Nand had died on 03.12.2014, therefore, the offence punishable under Section 302 IPC was added. However, after conclusion of the investigation, final report was submitted under Section 173 Cr.P.C. for the offence punishable under Section 306 IPC only, as the offence punishable under Section 302 IPC stood deleted. Since, the offence was triable by Sessions Court, therefore, the same was committed to the Sessions Court and thereafter trial Court proceeded to frame the charges against the accused under Section 306 IPC

The prosecution adduced its evidence and examined complainant-Sunil Kumar as PW-1, who deposed before the Court on 24.05.2016 followed by his cross-examination on 02.08.2016, 23.02.2017, 10.04.2017 and 10.05.2017. His sister namely Reshma Rani, wife of the victim deposed before the Court on 13.12.2016 and her cross-examination was concluded on 10.05.2017; besides the above two material witnesses, prosecution had examined 6 more witnesses out of total 13 witnesses.

The prosecution on 05.02.2018, moved an application under Section 216 Cr.P.C. through the Public Prosecutor for amendment of charges. In the said application, it was pleaded that in view of the testimony of PW-1 Sunil Kumar and PW-2 Reshma Rani offence under Section 302 IPC was made out and prayer was made for alteration of the charge. The said application was contested by way of filing the reply primarily on the ground that after framing of charges in February, 2015, prosecution had already examined material witnesses in a period of 3 years. Even twice, the application under Section 311 Cr.P.C. moved by prosecution was also allowed. Further it was highlighted that after thorough investigation, the offence punishable under Section 302 IPC was deleted for lack of evidence. Certain excerpts of the depositions of prosecution witnesses, particularly PW-3 namely Sh. Dhruv Dahiya, IPS were relied upon, who in his report had found that no offence under Section 302 IPC was made out. It was mentioned that there was no evidence of forcible administration of poison to the victim, therefore, offence punishable under Section 302 IPC was not made out. It was also highlighted that witnesses PW-1 and PW-2 who were related to victim went against the medical advice and refused for the

treatment to victim as advised by the doctors, and did not give their consent for prescribed treatment, which resulted into the death of Sachida Nand. In the end, it was prayed that application be dismissed as the trial was at the advanced stage.

According to the defence, the statements of PW-1 and PW-2 is nothing but a hearsay evidence and insufficient for alteration of charge particularly when their statements under Section 161 Cr.P.C. were not recorded.

After hearing the parties, the learned trial Court vide order dated 07.03.2018 proceeded to allow the application. Aggrieved against the same, the present revision petition has been filed.

Learned counsel for the petitioner contends that the alteration of the charge has been accepted by the trial Court in a mechanical and a routine manner without even considering the stage of trial particularly the fact that the prosecution has already examined the material witnesses. It is contended that the alteration of charge completely throws away the case of the prosecution and the trial would start *de novo* for altogether a different charge i.e. for the offence punishable under Section 302 IPC. It is pointed out that the trial Court has simply referred to the testimony of PW-1 and PW-2 in the impugned order and proceeded to accept the application without even referring to the other material witnesses, who had conducted the investigation and submitted the final report for the offence punishable under Section 306 IPC. It is vehemently contended that the reply of the accused to the said application was neither referred to nor discussed at all by the trial court while passing the impugned order. Learned counsel for the

petitioner further contends that the application by the Public Prosecutor runs into few lines and the trial Court proceeded to accept the same with a pre-determined mind without even examining the material on record.

On the other hand, the learned State counsel has argued that the order passed by the learned trial Court is justified. It is contended that the evidence of PW-1 and PW-2 is sufficient to indicate for the purposes of charge that the accused deserves to be tried for the offence punishable under Section 302 IPC. According to him, stage of the trial is immaterial as Section 216 Cr.P.C. contemplates that the trial Court can alter or amend the charge at any stage before the final decision.

After hearing learned counsel for the parties, and before advertng to the facts and circumstances of this case, it would be appropriate to examine the provisions of Section 216 Cr.P.C. and the same is reproduced below:-

“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.”

A bare perusal of the above provision indicates that the statute has conferred an extra ordinary power with the trial Court to either alter or amend the charge, framed earlier, at any stage before the pronouncement of final judgment. At the same time, the Court has to be extremely careful while exercising jurisdiction under Section 216 Cr.P.C. and must ensure that there exists convincing material and the existing charge deserves to be modified. While exercising the power, the Court must also keep in mind the stage of the trial and other attending circumstances to assess that the alteration would not cause any prejudice to the accused.

In the present case, the previous charge was for abetment of suicide punishable under Section 306 IPC and the alteration has completely changed the nature of the case set up by the prosecution by converting it into the charge of culpable homicide amounting to murder. For such an alteration, there must exist strong material and the Court must record the satisfaction in that regard that there is compelling material to alter the charge.

A perusal of the impugned order reveals that the trial Court has simply noticed the evidence of PW-1 and PW-2 while allowing the

application without even adverting to the reply filed by the defence. Besides, it is not a case where the evidence emerged suddenly during the course of the trial, but the version of PW-1 from the beginning alleged forcible administration of poison to the victim, however, during investigation it was found that there was no material or evidence to suggest commission of offence punishable under Section 302 IPC. The prosecution had examined PW-3 namely Sh. Dhruv Dahiya and had also produced his report Ex.PW-3/G which contained the reasons for deletion of offence punishable under Section 302 IPC. The Court while accepting the application of the Public Prosecutor has not at all referred to the said report or other material to record a satisfaction that there are compelling reasons to alter the existing charge. The trial court ordered that the charge under Section 302 IPC be framed and refused to entertain the argument of the accused that the trial would start *de novo*. It was observed that alteration of charge cannot be refused merely on the ground that the trial would start *de novo*. Apparently, the Court has not at all considered the principles of criminal jurisprudence to record the satisfaction that no prejudice would be caused to the accused.

In view of the above, the impugned order is set aside and the trial Court is directed to decide the application afresh by passing a reasoned order considering all the important aspects of the case.

The revision petition is disposed off.

01 July, 2019
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(MANOJ BAJAJ)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No