

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :16.12.2020
PRONOUNCED ON : 30.12.2020

CORAM

The Hon'ble Mr.Justice G.CHANDRASEKHARAN

Crl.R.C.No.1221 of 2017

K.Selvam

.. Petitioner

vs.

1.Kicha @ Krishnamoorthy
2.Manogaran
3.Anbu
4.Ravichandiran
5.Pazhani
6.Sounthar
7.Gopi @ Gopalakrishnan
8.Ramesh

9.State Represented by Sub Inspector of Police,
Vellore North Police Station (I & O),
Vellore District.

... Respondent

Crime No.50/2011

PRAYER: Criminal Revision Petition under Section 401 read with 397 of Code of Criminal Procedure to call for the records in connection with Crl.R.P.No.21 of 2015 order dated 05.09.2016, on the file of the learned 1st Additional District and Sessions Judge, Vellore, Vellore District and by allowing the order passed by Judicial Magistrate IV, Vellore in CMP.No.400/2015 in C.C.No.116 of 2011, dated 22.04.2015 and setting aside the order.

For Petitioner : Mr.E.Kannadasan

For respondents 1 to 8 : Mr.K.S.Rajagopalan

For Respondent 9 : Mr.K.Madhan,
Government Advocate (Crl. Side)

ORDER

This criminal revision petition is filed against the order of the learned First Additional District and Sessions Judge, Vellore, in Crl.R.P.No.21 of 2015 which was filed against the order passed in Crl.M.P.No.400 of 2015 in C.C.No.116 of 2011 by the learned Judicial Magistrate IV, Vellore.

2. CrI.M.P.No.400 of 2015 in C.C.No.116 of 2011 was filed by the prosecution under section 216 Cr.P.C for framing additional charges against the accused and also against the proposed accused to be summoned.

3. The case of the prosecution, in brief is as follows:

(i) On 29.01.2011 around 19.00 hours, in Vellore to Arcot Road, opposite to Saravana Bhavan, the accused formed unlawful assembly armed with deadly weapons such as wooden logs, iron rods and abused LW-1, Selvam using obscene words and asked him to withdraw the civil case filed by him against one Suresh and insisted him to return the sale agreement executed by Suresh. LW1 Selvam told them that he was not going to withdraw the case and he would not allow Suresh to sell the land to anybody else. A1 and A2 assaulted him with stick on his head causing bleeding injuries, A3 assaulted him with an iron rod on his face, A4 caused injury on his right hand with a wooden stick, A6 assaulted him with an iron rod on his back and A7 and A8 assaulted the him with their hands and caused injuries. Thus, A1 to A6 committed the offences punishable under section 294(b), 324, 363 and 506(ii) and A7 & A8 committed the offences punishable under section 294(b), 323, 363 & 506(ii) IPC.

(ii) It is further alleged that during the course of chief examination, on 18.12.2014, LW1 Selvam stated that some other accused had also involved in the commission of offence of kidnapping him in order to commit wrongful confinement and attempt on his life. The evidence of PW1 makes out a prima facie case for offences under section 294(b), 341, 324, 342, 346, 347, 348, 364 365, 384 387, 395 r/w 397, 506(ii) and 307 IPC r/w 149 IPC and 120 IPC r/w 147 and 148 IPC against A1 to A8 and also against Suresh, Anandan S/o. Ramesh, Anandan (Advocate clerk), Renu and Durai. Therefore, the learned Public Prosecutor prayed for framing of additional charges under Section 216 Cr.P.C. as aforesaid against the accused and also against the accused to be added as additional accused.

4. This petition was resisted by the accused on the ground that the story developed by PW1, during the course of chief examination is a new story and he improved several versions to falsely implicate some other persons as co-accused. It is seen from the evidence of PW1 that the place of occurrence, the manner of occurrence and the overtact attributed to the accused would contradict his evidence with other material evidence available. His evidence is not supported by any other acceptable corroborative evidence. Therefore, the learned counsel for the accused prays for the dismissal of this petition.

5. On considering the materials produced before the learned Judicial Magistrate, the learned Judicial Magistrate found that

the evidence of PW1 cannot be brushed aside and therefore, the charges suggested by the learned public prosecutor have to be framed. Against the said order, the accused preferred an appeal before the First Additional District and Sessions Judge, Vellore.

6. On the basis of judgment of the Supreme Court reported in 2013 (3) MWN (Cri. Page 521) in the case of P.Kartikalakshmi vs. Ganesh and others that "neither of the parties are entitled to pray the court to alter or add the charge and it is the discretion of the court to alter or add charges as per the offence", learned First Additional District and Sessions Judge, Vellore allowed CrI.R.P.No.21 of 2015 by stating that the order passed by the learned Judicial Magistrate-IV, Vellore is not sustainable. Against the said order, this Criminal Revision case is filed by K.Selvam, the defacto complainant.

7. Learned counsel for the petitioner submitted that the learned First Additional District and Sessions Judge, Vellore failed to properly appreciate the evidence and materials and allowed the CrI.R.P.No.24 of 2015. Therefore the learned counsel for the petitioner prayed for setting aside the order of the learned First Additional District and Sessions Judge, Vellore in CrI.R.P.No.21 of 2015.

8. In response to the learned counsel for the petitioner, learned counsel for the accused 1 to 8 submitted that the order of learned First Additional District and Sessions Judge, Vellore is in conformity with the order of the Hon'ble Supreme Court in the case of P.Kartikalakshmi vs. Ganesh and others reported in 2013 (3) MWN (Cri. Page 521) and prayed for the dismissal of the revision petition.

9. Learned public prosecutor appearing for the ninth respondent submitted that while deciding upon the addition or alteration of the charge, the material brought on record needs to have direct link with the ingredients of the alleged offence and charge can be added at the instance of the parties. He drew the attention of this Court to the Judgment of the Hon'ble Supreme Court reported in MANU/SC/0057/2020 in the case of Nallapareddy Sridhar Reddy vs. The State of Andhra Pradesh and Others and the Judgment of the Hon'ble Supreme Court reported in MANU/SC/0279/2016 Anant Prakash Sinha Vs. State of Haryana and Ors.

The relevant portion of the said Judgment reported in MANU/SC/0057/2020 in the case of Nallapareddy Sridhar Reddy vs. The State of Andhra Pradesh and Others is extracted hereunder:

"17. In *Anant Prakash Sinha v State of Haryana*
MANU/SC/0279/2016 : (2016) 6 SCC 105, a two judge

Bench of this Court dealt with a situation where for commission of offences under Sections 498A and 323 of the Indian Penal Code, an application was filed for framing an additional charge under Section 406 of the Indian Penal Code against the husband and the mother-in law. After referring to various decisions of this Court that dealt with the power of the court to alter a charge, Justice Dipak Misra (as the learned Chief Justice then was), held:

"18. ... the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 Code of Criminal Procedure.

20. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients

constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

The relevant portion of the Judgment reported in MANU/SC/0279/2016 Anant Prakash Sinha Vs. State of Haryana and Ors is extracted hereunder:

As is evident, an application was filed by the informant to add a charge under section 406 Indian Penal code as there were allegations against the husband about the criminal breach of trust as far as her stridhan is concerned. It was, in a way, bringing to the notice of the learned Magistrate about the defect in framing of the charge. The Court could have done it suo motu. In such a situation, we do not find any fault on the part of the learned Magistrate in entertaining the said application. It may be stated that the learned Magistrate has referred to the materials and recorded his prima facie satisfaction. There is no error in the said prima facie view. We also do not perceive any error in the revisional order by which it has set aside the charge framed against the mother-in-law. Accordingly, we affirm the order of the High Court in expressing its disinclination to interfere with the order passed in revision. We may clarify that the entire scrutiny is only for the purpose of framing of charge and nothing else. The learned Magistrate will proceed with the trial and decide the matter as per the evidence brought on record and shall not be influenced by any observations made as the same have to be restricted for the purpose of testing the legal defensibility of the impugned order.

10. It is seen from these Judgments that the Judgment of the Hon'ble Supreme Court in the case of P.Kartikalakshmi vs. Ganesh and others reported in 2013 (3) MWN (Cri. Page 521) is distinguished and now the position is that the court can add or alter the charges at the instance of the parties, subject of course to the supporting materials and evidence available. Therefore, there is no prohibition for the Assistant Public Prosecutor to file a petition to frame additional charge or add a charge. It is for the court to take a final decision as to whether to frame additional charge or alter the charge.

11. In this view of this matter, the order of the learned First Additional District and Sessions Judge, Vellore in CrI.R.P.No.21 of 2015 is set aside and the order passed by the learned Judicial Magistrate No.IV, Vellore is restored. Learned Judicial Magistrate No.IV, Vellore is directed to frame appropriate additional charges or alter the charges and afford opportunity to the accused to face the charges as per the procedure contemplated under section 216 and 217 Cr.P.C. The case is of the year 2011. The learned Judicial Magistrate No.IV, Vellore is directed to dispose the case within a period of three months from the date of receipt of a copy of this Order.

12. With the above observation and direction, this Criminal Revision case is allowed.

Sd/-
Assistant Registrar (CS.II)

/True Copy/

Sub Assistant Registrar

To

- 1.The First Additional District and Sessions Judge, Vellore
- 2.-Do-Thro' The Principal Sessions Judge, Vellore.
- 3.The Judicial Magistrate No.IV, Vellore.
- 4.-Do-Thro' The Chief Judicial Magistrate, Vellore.
- 5.The Sub Inspector of Police,
Vellore North Police Station (L & O),
Vellore District.
- 6.The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.E.Kannadasan, Advocate SR.NO.8/21

AKM/23.02.21/6P-8C/

CrI.R.C.No.1221 of 2017
30.12.2020