

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

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CRM-M-890-2020

Date of Decision: 10.01.2020.

Devi Ram

....Petitioner.

Versus

State of Haryana and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sunny Bhardwaj, Advocate for the petitioner.

Suvir Sehgal, J. (Oral)

Instant petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") impugning the judgment dated 03.12.2019 (Annexure P5) passed by Sessions Judge, Hisar and order dated 21.09.2019 (Annexure P3) passed by Judicial Magistrate Ist Class, Hansi, whereby application filed by the petitioner-complainant under Section 216 Cr.P.C. was dismissed.

Facts, in brief, are that the complainant had filed a criminal complaint under Sections 409, 420, 465, 467, 468, 471, 474 and 120-B IPC against five persons, under Section 156(3) Cr.P.C. before Magistrate, Hansi for registration of case and for investigation. Vide order dated 23.06.2014 (Annexure P1) the Magistrate sent the complaint to the SHO concerned for registration of an FIR and for carrying out the investigation. FIR No.245

dated 19.07.2014 under the above mentioned provisions was registered against the accused. In the investigation, the police found that the Secretary, Gram Panchayat, Ghirai, the Block Development & Panchayat Officer, Block Hansi and Rajbala Sarpanch of Gram Panchayat, Ghirai were innocent whereas offence was found to have been committed by Baljeet Singh Mate (MGNREGA), Gram Panchayat, Ghirai, Jaibir Singh, Mate (MGNREGA), Gram Panchayat, Ghirai and Chand Ram. Report under Section 173 Cr.P.C. was filed against them for commission of offence punishable under Sections 420, 465, 467, 468, 471, 474 read with Section 120-B IPC. Finding a prima facie case against three accused, the trial Court charge sheeted the three accused under the said provisions vide order dated 29.01.2016. During the course of its evidence, the prosecution submitted an application under Section 319 Cr.P.C. for summoning Rajbala, Sarpanch and two other officials of the Gram Panchayat as additional accused to face trial. Vide order dated 21.07.2017, Rajbala, Sarpanch was summoned as an additional accused to face trial alongwith the abovenamed three co-accused and the two other co-accused mentioned in the application were not summoned. Rajbala-accused appeared before the trial Court and charge was framed against her under Sections 467, 468, 471, 474 read with Section 120-B IPC vide order dated 03.02.2018. Thereafter, prosecution evidence was closed by order of the Court on 03.08.2019. On the adjourned date i.e. 07.08.2019, the statement of the accused was recorded and the case was posted for defence evidence. It was at that stage, the application under Section 216 Cr.P.C. was filed by the petitioner-complainant, for altering the charge against the accused Rajbala, by adding the offence under Section 409

21.09.2019 (Annexure P3), the application was rejected by the trial Court. Revision filed by the petitioner-complainant against the said order was also dismissed by learned Sessions Court vide order dated 03.12.2019 (Annexure P5). Both the orders dated 21.09.2019 (Annexure P3) and 03.12.2019 (Annexure P5) are under challenge in the present petition.

Learned counsel for the petitioner has been heard.

There is no dispute with the proposition that application under Section 216 Cr.P.C. for alteration or addition to a charge can be filed at any time before the judgment is pronounced. However, the alteration or addition in charge must be done on the basis of some evidence on the record. Power to alter charge has to be exercised with caution. Court has to come to finding that the charge already framed is either defective for any reason or because of some evidence which has come on the record, it is necessary to alter the charge.

Learned counsel for the petitioner has been unable to point out any evidence which has come on the record necessitating alteration in the charge. Rather perusal of the order shows that at the time when the charge was framed against accused-Rajbala, under Sections 467, 468, 471, 474 read with Section 120-B IPC, the trial Court was prima facie satisfied on the basis of the material before it that the charges under the said provisions were made out. It is the same evidence which was collected by the Investigating Agency, and was available at the time of framing of the charge on the basis of which application under Section 216 Cr.P.C. has been moved. Rather, the sole argument raised by the petitioner is that when the arguments were being prepared, it came to his notice that charge under

not a sufficient ground to alter the charge.

It further deserves to be noticed that when the charge was framed under Sections 467, 468, 471, 474 read with Section 120-B IPC against Rajbala, accused, on 03.02.2018, neither the complainant nor the State had challenged the same. Therefore, the satisfaction of the trial Court recorded qua the charge against the said accused attained finality. That satisfaction of the trial Court has not been under challenge at any stage, even thereafter.

In view of the above, finding no merit in the instant petition, the same is dismissed.

Before parting with the judgment, it is clarified that anything said hereinabove would not be taken as an expression on the merit of the case during trial.

(SUVIR SEHGAL)
JUDGE

10.01.2020
komal

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No