

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 12.12.2019

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Judgment pronounced on: 16.03.2020

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CRL.REV. 12/2015

PREM SINGH

..... Petitioner

Through: Mr. Anurag Jain, Adv.

versus

STATE & ORS

..... Respondents

Through: Mr. M.S.Oberoi, APP for the
State with S.I.Kuldeep Singh.
Mr. Deepender Hooda, Adv. for
R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

RAJNISH BHATNAGAR, J.

1. The present revision petition has been filed by the petitioner against the order dated 01.09.2014 passed by the learned Trial Court by virtue of which charges against the respondents were framed under Sections 308/323/34 IPC.

2. In brief the case of the prosecution is that on 21.11.2013 petitioner was standing outside his house and all of a sudden respondent no. 2 tried to tie his buffalo outside the house of the petitioner to which he objected. On this, respondent no. 2 started abusing him and used bad slays. It is alleged that in the mean

time, petitioner started calling his family members and respondent no. 2 also called his family members. In the meanwhile, respondent nos. 3 and 4 reached there. It is alleged that respondent no. 3 was having spade (*faavra*) in his hand and respondent no. 4 was carrying a stick (*danda*) in his hand and they both started quarreling with the petitioner. When the petitioner tried to defend himself respondent no. 2 caught hold of him and respondent no. 3 attacked the petitioner on his head with spade and respondent no. 4 started beating him with stick. In the meanwhile, on hearing noise, son and daughter-in-law of the petitioner reached the spot. On the basis of material on record, learned trial court framed charge under Sections 308/323/34 IPC.

3. It has been mainly argued by learned counsel for the petitioner that the learned Additional Sessions Judge has framed charge under wrong Section and instead of Section 308 IPC charge should have been framed under Section 307 IPC. He further argues that the learned Additional Sessions Judge has failed to consider that all the respondents were sharing common intention to cause fatal injuries to the petitioner. He further argues that injuries on the person of the petitioner have been opined to be “grievous” in nature.

4. On the other hand, it is submitted by learned counsel for the respondents that there is nothing in the statements of the

witnesses to show that the intentions of the respondents were to cause death of the injured persons. It is further submitted by him that the nature of injury sustained by the petitioner and other injured persons was simple in nature. It is further submitted that since the petitioner is an ex-army man, he misused his status and got himself admitted in army based hospital in order to prepare a case of grievous offence. He further argues that the petitioner got himself admitted in Base Hospital and Rockland Hospital on his own without any referral order of the doctors of Rao Tula Ram Memorial Hospital. It is also submitted that thirteen witnesses have been examined in this case and trial is at the fag end.

5. As far as the question of alteration of charges is concerned, the relevant Section is Section 216 of Cr.P.C., and the same is reproduced hereinunder:

“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.”

6. The power of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision with the purpose of alteration or addition of any charge at any time before pronouncement of the judgment. No party, neither *de-facto* complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge because it is not provided under Section 216 Cr.P.C. Now if such a course is to be adopted by the parties, then it will be impossible for a criminal court to conclude its proceedings and the concept of speedy trial will be jeopardized.

7. In the judgment in the case of *Nazim Khan and Anr. Vs. State 89 (2001) DLT 279*, the Court had declined the alteration of charge when the matter had reached the final stage of trial. It is also a settled law that in case after framing of charges and during the course of trial prosecution brings certain evidence which suggests commitment of some offences, the Court is then within

its power to convict the accused of the offences for which evidence is revealed against him.

8. Coming to the facts of this case, in case the prosecution brings evidence which points out towards commitment of offence under Section 307 IPC, the learned trial court will be well within its right to take recourse to Section 221(2) Cr.P.C.

9. In the aforesaid facts and circumstances, there is no merit in the present revision petition and the same is hereby dismissed.

RAJNISH BHATNAGAR, J

MARCH 16, 2020

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