

19.01.2021
tkm/ct 42
sl no. 46

C.R.R. No. 1010 of 2020

In Re : Sk. Ramjan Ali & Ors.

.....petitioners

Mr. Kallol Mondal
Mr. A K Samanta
Mr. K Roy
Ms. A Chel
Mr. S Das
Mr. A Banerjee

..... for the petitioner

Mr. S Bapuli
Mr. Arijit Ganguly

..... for the State

Let supplementary affidavit furnished by the petitioners be kept on record.

The impugned order dated 26.2.2020 passed by the learned Additional District & Sessions Judge, Fast Track 2nd Court, Tamruk, Purba Medinipur in connection with S.T case no. 7(1)15 proposing alteration of the charge is the subject of challenge in this revisional application.

Mr. Mondal, learned counsel representing the petitioners submits that even after the date being fixed for delivery of judgment, learned court below had taken a sudden stand proposing alteration of charge, for the absence of any necessary charge against the accused persons (more than one), who are facing trial in a case under section 302 IPC.

It is thus contended by Mr. Mondal that sudden change of direction by the learned court below with regard to making

alteration of charge has caused great prejudice to the petitioner, as the case was admittedly fixed for delivery of judgment.

It is not doubted by any of the parties to this case that as many as 10 accused persons were roped in this case so as to face a trial under section 302 IPC.

Mr. Bapuli representing the State submits supporting the order of the learned court below that when the petitioners were offered to exercise their discretion/option either to make adoption of the evidence already recorded, or adduce fresh evidence, there lies no illegality so as to interfere with under the behest of section 482 Cr.P.C.

The attention of the court is drawn to the supplementary affidavit furnished by the petitioners.

In course of hearing, it could be learnt that 27.1.2021 is date fixed by the trial court for framing of charge.

Having considered the rival submissions of the parties, it appears that the petitioners have grossly contended to have suffered prejudice for having made alteration of the charge even at the stage of delivery of the judgment. There cannot be any dispute that the charge framed can be altered at any stage finding sufficient materials and after giving an opportunity of hearing to face the proposed alteration of charge. In this case, while proposing for making alteration of the charge, the learned court below proceeded to offer an opportunity to the petitioners thereby providing option to be exercised by the petitioners either to adopt the evidence or adduce a fresh evidence, subject to their choice, the court is not

agreeable to the contention raised by Mr. Mondal. The date so fixed by the court below for framing of charge must be construed that it is fixed in consonance with an order made earlier proposing for making alteration of the charge. When there has been scope provided to the petitioners requiring either to adopt the evidence or to adduce fresh evidence, which is of course subject to the cross-examination, there cannot be any prejudice to be suffered in any manner whatsoever. It is thus for the petitioners to exercise their option in the light of the observation passed in the impugned order. If that option is appropriately exercised by the petitioners, there shall be no prejudice caused to the petitioners, subject to facing cross-examination of the new evidence if any produced during trial.

The impugned order would thus go unaltered.

The revisional application stands dismissed.

The petitioners are given liberty to make exercise of the option already extended by the learned court below to the petitioners.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon usual undertaking.

(Subhasis Dasgupta, J.)