

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Reserved on 16-08-2021****Pronounced on 25-10-2021****WPCR No. 185 of 2021**

- Jagdish Bansal S/o Ramphal Agrawal Aged About 61 Years R/o Bansal Apartment Sakti, Police Station And Tahsil- Sakti, District- Janjgir-Champa, Chhattisgarh Mo. No. 9300624445.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Home Police Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nawa Raipur, District- Raipur, Chhattisgarh
2. Director General Of Police, Police Head Quarter Raipur, District- Raipur, Chhattisgarh
3. Superintendent Of Police, Janjgir, District Jangir-Champa, Chhattisgarh
4. Station House Officer, Police Station- Sakti, District- Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Ratnesh Kumar Agrawal, Advocate
For State	:	Mr. S.C. Verma, Advocate General with Mr. Ashish Tiwari, Government Advocate

Hon'ble Shri Justice Narendra Kumar Vyas**C.A.V. ORDER**

1. The petitioner has filed present petition alleging inaction and arbitrariness of respondent authority that one Anand Agrawal who alleged to have committed an offence under Section 294, 506, 323, 341, 307 of the IPC registered at police station – Sakti, District – Janjgir Champa bearing Crime No. 423/2020 has not been arrested by the police.
2. The facts projected by the petitioner in brief are that when the petitioner reached in front of Hotel Natraj at Sakti on 05.12.2020, then accused Anand Agrawal wrongfully restrained him and committed marpeet with Danda, resultantly petitioner received injury on his vital part of head and also used filthy language. The Petitioner has also annexed the photographs of the injuries sustained by him. He immediately reported the incident before the police who registered

the case as Crime No. 423/2020 for committing offence under Sections 294, 506, 323, 341, 307 of the IPC but the accused has not been arrested therefore, he has filed the present writ petition (criminal).

3. The petitioner has filed petition with a prayer that accused namely Anand Agrawal in connection with Crime No. 423/2020 registered at police station – Sakti, District – Janjgir Champa be arrested. The said prayer has already been considered and the accused has been released on bail by the trial Court as all the offences are cognizable offence. But the learned counsel for the petitioner insists that since the offence under Section 307 of the IPC has been deleted by the police authority malafidely, therefore, the issue with regard to power of police authority to delete the charges may be decided by this Court.
4. This Court has directed the Station House Officer of concerned police station on 05.07.2021 to appear before this Court on 08.07.2021 along with case diary of the case to explain what action has been taken by him in connection with Crime No. 423/2020. Pursuant to the direction, the Station House Officer appeared before this Court along with diary and informed to this Court that the accused has been arrested but charge under Section 307 of IPC has been deleted after examining the medical report. This Court put a specific query to the State counsel whether such power is lying with the police authority to delete a section mentioned in FIR, to which, he would submit that it has been done with a direction of higher authority. This Court directed the State to file a detailed affidavit. Pursuant to the direction given by this Court, affidavit was filed by the State sworn by the Sub Divisional Officer (Police), Sakti on 15.07.2021, mainly contending that if information is received with regard to any cognizable offence, it has to be recorded by the police authority in prescribed format which amounts to registration of FIR and in the FIR the relevant details relating to the offence i.e. name of the complainant, date & place of incident, description of crime, etc. have to be recorded. On the basis of description of crime, as narrated by the complainant either in written or oral form, the police officer forms a prima-facie opinion with regard to commission of offence under particular Section of IPC or

other provisions of law are attracted in the given case. After registration of FIR, the police investigates the matter as defined under Section 2(h) of Cr.P.C. and in the investigation evidence is collected and after collection of evidence, it is submitted before the concerned Magistrate in the form of final report. It has been further contended that as per Section 173(2)(d) of Cr.P.C. in the final report, the police has to disclose whether any offence has been committed and if so, by whom. The language of the said clause indicates that after concluding the investigation it must be shown in the final report as to whether any offence has been committed or not. If, based on the investigation and material collected, the police officer is of the opinion that a particular offence is not made out, it is well within his authority to remove/delete the charge. The police authority forms his opinion with respect to commission of offence but there is no provision under the Cr.P.C. which specifically provides authority to the police officer to delete or add any provision during the course of investigation. There is no such specific power but alteration and deletion of the charges has been recognised and approved by the Hon'ble Supreme Court in case of **Abhinandan Jha v. Dinesh Mishra**¹. The Hon'ble Supreme Court in subsequent judgment also in case of **Hansanbhai Valibhai Qureshi vs. State of Gujrat**² has examined the similar issue and says that police authority is not the ultimate authority to decide as to which sections are applicable, appropriate steps are to be taken by the complainant along with the prosecuting agency before the trial Court. It is contended that since, such remedy is available under the Code, writ petition is not maintainable before this Court. The petitioner being victim has remedy under Section 216 Cr.P.C. before the trial Court for alteration of charges. It has been further contended that before submitting final report before the concerning judicial Magistrate, the investigating authority has taken opinion from the doctor and on the basis of the opinion the charge under Section 307 of the IPC has not been mentioned in the charge-sheet.

5. I have heard learned counsel for the petitioner and learned Advocate

¹ AIR 1968 SC 117

² (2004) 5 SCC 347

General for the State and perused the diary of the case.

6. The learned Advocate General would refer to paras 776 and 787 of the Police Regulation which provide that higher authority can issue necessary direction for alteration of the charges. Even if on investigation it is found that alternation in charges is necessary the same can be made very well, therefore, the police authority has not committed any illegality and they have acted in accordance with provisions of Cr.P.C. and Police Regulation, therefore, the present writ petition is not maintainable. Para 776 and 787 of the Police Regulation are extracted below:-

“776. आरोप पत्र में परिवर्तन—केवल असाधारण मामलों को छोड़कर, मूल आरोप पत्र में अन्वेषण अधिकारी के सिवाय अन्य किसी व्यक्ति या पुलिस अधिकारी के द्वारा कोई परिवर्तन, सुधार या टिप्पणी नहीं की जानी चाहिये। जब ऐसा किया जाय या मूल आरोप पत्र के स्थान में नया पत्र प्रतिस्थापन (बदलना) में तैयार करना आवश्यक पाया जाय तब उसके समक्ष मामले को लाते समय दंडाधिकारी के समक्ष किसी परिवर्तन या परिवर्तन का कारण अवश्य पेश किया जाना चाहिये। किसी भी दशा में, चाहे नया साक्ष्य प्राप्त करने के लिए हो या किसी अन्य उद्देश्य से हो, दंडाधिकारी के स्पष्ट आदेश के बिना, चालान अधीक्षक के कार्यालय में निलम्बित नहीं किया जाएगा।

776 अ. यदि विचारण के दौरान, साक्ष्य के अभिलेख से यह प्रतीत होता है कि मामले में दोषसिद्धि होना संभव नहीं है तब पुलिस अभियोजक, दंड प्रक्रिया संहिता की धारा 494 (नई धारा 321) के अन्तर्गत प्रकरण अभियोजन से वापस ले लेगा।

[787. खरिजी (विलोपन)–खात्मा (अन्तिम प्रतिवेदन)]—चालान या आरोप पत्र क्र. (1) के मामले में प्रतिवेदन बनेगा। क्र. (2) एवं (3) के मामले में खात्मा (अन्तिम प्रतिवेदन) पुलिस अधीक्षक के माध्यम से जो चाहे तो प्रतिवेदन को न्यायिक दंडाधिकारी को भेज दे या आगे अन्वेषण करने के लिये आदेश दे यदि वह ऐसा आवश्यक समझे, अपराध का विचारण करने के लिये सक्षम न्यायिक दंडाधिकारी को भेज दिया जाएगा। यदि खत्मा (अन्तिम प्रतिवेदन) ऐसे तथ्य प्रगट करता है जो मामले का झूठा होना विश्वास करने के लिय प्रथम दृष्टया आधार प्रगट करता है या अभियुक्त की अपराधिक जिम्मेदारी के सम्बन्ध में परिवादी की ओर से गल्ती के कारण से संस्थिति किया जाना विश्वास करने के लिये प्रथम दृष्टया आधार प्रगट करता है तब मुख्य न्यायिक दंडाधिकारी अपराध रजिस्टर से अपराधों को निकाले जाने के लिए आदेश दे सकता है। इसी तरह, यदि अभियुक्त विचारण के लिये लाया जाता है। और दोषमुक्त या उन्मोचित (Acquitted or discharged) इस आधार पर हो जाता है कि कोई अपराध घटित नहीं किया गया था तब न्यायिक दंडाधिकारी,

मुख्य न्यायिक दंडाधिकारी के आदेशों के अधीन अपराध को मिटाने के लिये आदेश दे सकता है । मामले निकाले जाने के लिये आवेदन पत्र अधीक्षक के माध्यम से दिये भी जा सकते हैं और महत्वपूर्ण मामले तक ही सीमित होना चाहिये ।]”

7. The case diary would show that after the incident on 05.12.2020, the police has started investigation and also called the bed head ticket and C.T. Scan report of the petitioner, thereafter on 26.01.2021 police has sought report from the treating doctor of Community Health Centre, Sakti. The doctor has given opinion that the injuries sustained by the petitioner is of simple in nature, the same were not sufficient to cause death. Thereafter, the matter was reported to the Inspector General of Police for deleting Section 307 of IPC against the accused. Then offence under Section 307 of IPC has been deleted. Whether the opinion given by the doctor is correct or not or whether an offence under Section 307 of IPC is made out or not is again subject matter of trial. The authenticity and correctness of the medical report can be examined by the trial Court, thereafter, the findings whether Section 307 is made out or not can be ascertained. These all are disputed facts. This Court while hearing the writ petition under Article 226 of the Constitution of India cannot examine the disputed facts at this juncture. Even otherwise, the Hon'ble Supreme Court in case of **Hansanbhai Valibhai Qureshi (supra)** has in paragraphs No. 4 and 8 as under :-

“4.The High Court noted that specific allegations were made regarding the biased approach of the police officials under the influence of local MLA. The petition was resisted on the ground that on detailed investigation it was noticed that the offences relatable to Sections 395 and 120B IPC were not made out and, therefore, were deleted. Such a course is permissible in law. The High Court was of the view that if further investigation is necessary the remedy is available in the Code of Criminal Procedure, 1973 (in short the 'Code') and further investigation can be carried out under the supervision of the trial Court. Moreover, it was held the police was not the ultimate authority who can decide as to which sections are applicable. Appropriate steps can be taken by the complainant along with the prosecuting agency before the trial Court. Since such remedy was available under the Code, the petition under Article 226 of the Constitution of India, 1950 (in short the 'Constitution') was not entertained.

8. Section 228 of the Code in Chapter XVII and Section 240 in

Chapter XIX deal with framing of the charge during trial before a Court of Sessions and trial of Warrant -cases by Magistrates respectively. There is a scope of alteration of the charge during trial on the basis of materials brought on record. Section 216 of the Code appearing in Chapter XVII clearly stipulates that any court may alter or add to any charge at any time before judgment is pronounced. Whenever such alteration or addition is made the same is to be read out and informed to the accused.”

8. The Hon’ble Supreme Court in case of **Kantilal Chandunlal Mehta vs State of Maharashtra**³ has also examined power of trial Court to alter/amend a charge and has held in para 4 as under :-

“4. On this interpretation of the order the question is whether what has been directed by the learned Judge is in conformity with the provisions of the Code of Criminal Procedure. In our view the Criminal Procedure Code gives ample power to the courts to alter or amend a charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him. The power of the appellate court is set out in section 423 Cr. P. C. and invests, it with very wide powers. A particular reference may be made to clause (d) of sub-section (1) as empowering it even to make any amendment or any consequential or incidental order that may be just or proper. Apart from this power of the appellate Court to alter or amend a charge, section 535 Cr. P. C. further provides that no finding or sentence pronounced or passed shall be deemed to be invalid merely on the ground that no charge has been framed unless the Court of appeal or revision thinks that the omission to do so has occasioned failure of justice and if in the opinion of any of these courts a failure of justice has been occasioned by an omission to frame a charge, it shall order a charge to be framed and direct that the trial be recommenced from the point immediately after the framing of the charge. The wide and extensive power which an appellate or revisional court can exercise in this regard has also the support of the Privy Council. Lord Porter who delivered the opinion of the Judicial Committee in *Thakar Sahab v. Emperor*(1) had occasion to point out that while the history of the growth of Criminal Law in England its line of development and the technicalities consequent thereon would have made it more difficult and may be impossible to justify a variation of the charge, Indian Law was subject to no such limitation but is governed solely by the Penal Code and Criminal Procedure Code. In that case the Privy Council was called on to decide whether the alteration of the charge and the conviction from one of abetment of forgery by known person or persons to abetment of forgery by an unknown person or persons vitiated

³ (1969) 3 SCC 166

the conviction. It was held that it did not, because an Appellate Court had wide powers conferred upon it by section 423 and in particular by sub- section (1)(a) of that section, which is "always of course subject to the limitation that no course should be taken by reason of which the accused may be prejudiced either because he "is not fully aware of the charge made or is not given full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred".

9. The petitioner being victim can assist the prosecution for alteration of charges by moving an application before the concerned trial Court for alteration of charge. Section 216 of the Cr.P.C. empowers trial Court as well as Appellate Court to alter charges. Section 216 of the Cr.P.C. is extracted 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.
- (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."

10. Therefore, the petitioner has efficacious remedy under the provisions of Cr.P.C. and the plea raised by the petitioner requires adjudication by the trial Court based upon the collected evidence during course of trial.
11. Since, it is matter of evidence whether the police has rightly deleted the charge under Section 307 of IPC or not, is again subject matter of evidence which cannot be adjudicated or decided by this Court under Article 226 of the Constitution of India. Even otherwise, the petitioner has alternate efficacious remedy available under the Cr.P.C. to move

an appropriate application before the concerning Magistrate.

12. Accordingly, the present writ petition (criminal) is dismissed with the aforesaid liberty granted in favour of the petitioner.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Deshmukh