

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRR No.1063 of 2021 (O&M)

Date of Decision: October 26 , 2021

Sanjay

...Petitioner

Versus

State of Haryana

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Munish Behl, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG Haryana.

JAISHREE THAKUR, J. (Oral)

1. The petitioner herein is seeking to challenge the additional charge framed against him under Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('the POCSO Act' for short).

2. In brief the facts as stated are, that a complaint was filed by the mother of the prosecutrix on 13.06.2019 to the effect that her minor daughter aged 17 years went missing from the house and she suspects that Sanjay Kumar alias Biru has enticed her with an intention to marry. A Zero FIR number dated 13.6.2019 was registered under Sections 363, 366, 120-B IPC at Police Station Yamuna Nagar. The statement of the prosecutrix was recorded u/s 164 Cr.P.C on 19.6.2019. The matter was investigated and charges were framed by the Additional Sessions Judge, Ambala, under

Sections 363, 366A IPC read with Section 12 of the POCSO Act and Section 9 of Prohibition of Child Marriage Act. The prosecutrix in her examination-in-chief stated that the petitioner accused had committed rape upon her. Based on the statement, an application under section 216 Cr.P.C was filed for alteration of charge. The said application was contested by the petitioner herein, however, the Additional Session Judge amended the charges framed and added Section 6 of the POCSO Act. Aggrieved against the said order, the instant petition has been filed.

3. The petitioner challenges the impugned order by contending that the prosecutrix left her home of her own accord and had solemnised a marriage on 13.6.2019 with the petitioner. As the family members of the prosecutrix did not given their consent, a false case was registered against the petitioner and his family members. It is submitted that the petitioner and the prosecutrix had approached this High Court by way of filing CWP No.16883 of 2019 seeking protection of their life and liberty from the family members of the prosecutrix, which petition was disposed of with a direction to Senior Superintendent of Police, Yamuna Nagar to ensure protection of life and liberty of the prosecutrix as well as the petitioner. The prosecutrix by affidavit in support of the writ petition filed seeking protection, submitted her age as 19 years, and therefore, she was an adult on the date she solemnised her marriage with the petitioner. It is argued that in her statement recorded under Section 164 Cr.P.C., there is no mention that the petitioner had committed the offence of rape upon her. Rather, she stated that she had solemnized marriage with the petitioner of her free will and had also obtained protection order. It is also submitted that the

prosecutrix had denied getting physical examination, therefore, there is no material on the record to substantiate the fact that the offence of rape was committed upon the prosecutrix. The challan was presented only against the petitioner, even though his family members had been nominated as an accused in the said FIR. It is argued that once a statement had been given by the prosecutrix under Section 164 Cr.P.C, that she had got married and there was no allegation of offence of rape, then there would be no occasion to charge the petitioner under Section 6 of the POCSO Act. The counsel would also lay great stress on the fact that the amended charge was not read out to him as mandated under section 216 (2) Cr.P.C.

4. Per contra, Ms. Deepshikha Chauhan, AAG Haryana, would rely upon order dated 02.03.2021 passed by the court below where the charge was read out and explained to him. It is submitted that the amended charge was read over to the accused to which he pleaded not guilty and claimed trial. It is argued that on the reading of Section 216 Cr.P.C., it is clear that such an application can be moved at any stage of the trial and the present application was moved promptly when it was brought forward that rape had been committed upon the prosecutrix by the accused.

5. I have heard learned counsel for the parties and have gone through the pleadings of the case.

6. Section 216 of Cr.P.C. reads as under;

“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.

Sub-section (1) of Section 216 Cr.P.C. which falls under Chapter-XVII provides that any Court may alter or add to any charge at any time before judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. Section 216 of the Code empowers all criminal courts including Judicial Magistrate's Court, Session's Court and even High Court to alter the charges levelled against the accused, if the court finds that there is a need to alter charge due to certain event, incident or circumstances. In the matter of **Dr. Nallapareddy Sridhar Reddy vs. The State of Andhra Pradesh & Ors, Criminal Appeal No. 1934 of 2019**, the Hon'ble Supreme Court has

allowed the amendment of a charge even after the judgment stood reserved, since the words used in the statute is that amendment can be allowed *at any time before judgment is pronounced*.

7. The Hon'ble Supreme Court in the case of **Anant Prakash Sinha alias Anant Sinha vs. State of Haryana & Anr. AIR 2016 SC 1197**, after considering many of its previous decisions has held that:

“16. 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 Cr.P.C.”

8. In the case in hand, the petitioner was charged with Sections 363, 366A of IPC read with Section 12 of the POCSO Act and Section 9 of Prohibition of Child Marriage Act vide order dated 23.10.2019. The prosecutrix stepped into the witness box and categorically stated that she had been raped by the petitioner, which offence would not be covered under Section 12 of the POCSO Act, which only pertains to sexual harassment,

whereas, in the allegation of having committed the offence of rape, the petitioner would be charged under Section 4/6 of the POCSO Act. The charge is to be framed by the court based on the material before it and if a statement is given that an offence has been committed, the said statement of the victim cannot be outrightly dismissed. The allegation of rape is serious in nature and would have to be considered. The argument addressed that there is no medical report available on the record to establish the fact of rape, would be a plea taken at the time of the petitioner's defence.

9. The application for amendment of charge was moved immediately by the prosecution when the statement was given by the victim that she had been raped by the petitioner. Faced with the statement and the material before it, the court framed the charge. As held in **Dr. Nallapareddy Sridhar Reddy Versus The State of Andhra Pradesh & Ors (Supra)** *“At the time of framing of charge, it is sufficient if the court is able to form a presumption regarding the existence of ingredients constituting the offence found upon the material placed before it. It is not necessary for the court to undertake an analysis of the credibility, veracity or evidentiary value of the materials placed before it (Sajjan Kumar vs Central Bureau of Investigation).”*

10. The second contention raised that there was non-compliance of Section 216(2) Cr.P.C., insofar as the amended charge was not read out to the petitioner does not have merit. The date on which the application for amendment of charge was allowed by the trial court i.e. on 02.03.2021, the amended charge was read out to him and he did not plead guilty to the same and claimed the trial. Even the application filed for amendment was duly

contested.

11. Consequently, this court finds no infirmity or illegality in the impugned order framing additional charge by the trial court. Accordingly, the instant criminal revision petition is hereby dismissed.

October 26 , 2021
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No