

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M No. 47873 of 2021 (O&M)
Date of Decision: 25.11.2021**

Harkamaljit Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Onkar Singh, Advocate for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition under Section 482 Cr.P.C. seeks quashing of order dated 14.07.2021 (Annexure P-1), passed by the learned JMIC, Malerkotla, District Sangrur, whereby an application under Section 216 Cr.P.C., as moved by the complainant-petitioner, through the learned APP, for adding the apposite narrated charges therein against co-respondent Nos. 2 to 5, hence was dismissed.

2. The learned trial Court concerned, had initially framed a charge against the accused in respect of offences embodied in Sections 323, 324, 34 of the IPC. The afore offences are carried in FIR No. 103 of 11.10.2016, registered with Police Station Sadar Ahmedgarh, District Sangrur. An amendment to the afore made charges was endeavoured, to be made, by the learned APP concerned, through his filing an application under Section 216 Cr.P.C., before the learned trial Court concerned. The afore asked for amendment to the charges (supra), as initially drawn against the accused was endeavoured, at the post charge stage, and rather pointedly much after commencement of prosecution evidence.

3. The learned trial Court declined relief to the learned APP concerned, and, hence the complainant, who had through the APP, filed the afore application before the trial Judge concerned, makes a motion before this Court, for annulling the disaffirmative order (supra), as, made on the afore application, filed under Section 216 Cr.P.C., before the Court concerned.

4. At the outset, the non-incorporation of any offence in the charge(s) initially framed against the accused, may not be curable, through an amendment thereto, being asked for by the prosecution. Conspicuously, if the afore endeavour is made at the stage of prosecution witnesses concerned, having already entered into the witness box, or being in the process of theirs stepping into the witness box. Nonetheless, if the material prosecution witnesses proceed to make uneroded credible inculpatory testifications, of grave evidentiary vigor, in respect of commission of offences by the accused / charged persons, offences whereof are not embodied in the charge initially framed against him. Thereupon, the learned trial Judge concerned, bearing in mind all the proven uneroded inculpatory materials, may proceed to, thereafter, make a lawful order of conviction, upon the convicts-accused, yet only after conclusion of trial, and, even with respect to penal offences in respect whereof, no charge has been initially framed the accused. However, the afore empowerment is subject to the offences concerned, being jurisdictionally triable by the learned Magistrate concerned.

5. Obviously, the learned trial Court concerned can also proceed to, in accordance with law impose consequent therewith sentences, upon,

the accused-convict.

6. Though, at the stage of opening of prosecution evidence, and, after recording evidence of the prosecution witnesses concerned, the petitioner made inculpatory testifications against the accused, even with respect to offences constituted under Section 354 & 452 of IPC, and, hence the complainant through the APP concerned, made an application under Section 216 Cr.P.C., for consequent therewith amendments, being made, in the charge(s), as became initially framed against the accused. However, at the afore stage, the afore application, was neither maintainable rather was amenable for being dismissed. Nonetheless, if inculpatory testifications, of grave evidentiary vigor are made by the prosecution witnesses concerned, with respect to commission of offences by the petitioner herein, as embodied in Section 452 & 354 of IPC, and, though the offences (supra) became not incorporated in the initially drawn charge. Thereupon, they were yet amenable for being taken into account by the learned trial Judge concerned, to make an order of conviction in respect thereof, and also to lawfully impose consequent therewith sentence(s) upon the accused. However, the learned trial Judge has not borne in mind the afore foundational facts nor has borne in mind the principles (supra), hence rather vesting in him jurisdiction to make an order of conviction, and, also to impose consequent therewith sentence, even with respect to offences (supra), in respect whereof no charge was initially framed against the accused, and, qua wherewith he has the jurisdictional empowerment to make lawful orders (supra). Contrarily he proceeded to, in paragraph-5 of the impugned order, make discussions rather exculpating the purported guilt of the

petitioner in respect of his committing offences punishable under Section 354, and, under Section 452 of the IPC. Conspicuously, the afore exercise of appreciating of prosecution evidence, rather in a wholesome manner, was to be deferred, upto the stage of conclusion of trial.

7. In view of the above, since the learned Magistrate concerned, rather than dismissing the afore application, as not maintainable, hence preferred to make appraisals thereon, and, pointedly, hence at the pre verdict stage. Therefore, this Court directs the learned Magistrate concerned, to, after hearing the learned APP, and, also the defence counsel, besides his bearing in mind the references (supra), shall re-analyze the evidentiary worth of the testimonies of the prosecution witnesses concerned, remaining oblivious of the observations occurring in paragraph-5 of the impugned verdict. The learned Magistrate is also directed to, in a most dispassionate, and, in a whole some manner, proceed to anaylze the testifications of prosecution witnesses concerned, made in respect of commission of offences, in respect whereof no charge has been framed, and, to proceed in accordance with law.

8. Disposed of.

November 25, 2021

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>