

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(111)

CRR-490-2022(O&M)
Date of Decision: 15.03.2022

Supriya Guraya @ Priya

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Aditya Dassaur, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covil-19 situation and as per instructions.

The petitioner has approached this Court impugning the order dated 21.2.2022 passed by the learned Addl. Sessions Judge, Rupnagar, whereby the application filed by the complainant-prosecutrix under Section 216 Cr.P.C seeking amendment of charge has been allowed and additional charges under sections 12, 14, 15 and 16 of POCSO Act have been allowed to be framed against the petitioner.

As per facts of the case, the present FIR was lodged by the prosecutrix (name concealed). It was alleged that the prosecutrix was 16 years of age and she was sexually abused and many inappropriate instances happened to her for abusing her sexually and thus a request was made to take legal action. The allegations against the petitioner and the co-accused were specifically mentioned in the FIR wherein the allegations of rape and making the obscene videos of the prosecutrix by the petitioner were levelled. The investigation commenced and statement of the prosecutrix under Section 164 Cr.P.C was recorded. The charges were framed and the

Trial court took the cognizance of the offence. During trial the prosecutrix

was examined as PW-1, wherein she deposed against the petitioner and co-accused regarding her sexual abuse. It was thereafter that the application under Section 216 Cr.P.C was filed by the complainant-prosecutrix for the amendment of the charge against the petitioner which came up for hearing before the Trial Court. After hearing the parties the Trial Court allowed the same vide order dated 21.2.2022 wherein besides the charge for offence under Section 376 I.P.C read with Section 6 of POCSO Act, the charges under sections 12, 14 and 15 of POCSO Act against the accused Supriya, Jaspreet Singh Bains, Manjinder Singh, Jatinder Singh @ Sonu and Paramjit Kaur were ordered to be framed and section 14 read with Section 16 of POCSO Act against the accused Supriya. Aggrieved by the same, petitioner has approached this Court praying for setting aside the impugned order dated 21.2.2022.

Learned counsel for the petitioner has vehemently submitted that the view taken by the Trial Court in accepting the application under Section 216 Cr.P.C for amendment of the charge is totally wrong. He submits that on the basis of the statement of the complainant the FIR in question was lodged under Sections 354, 354-A I.P.C and Section 8 of POCSO Act. Thereafter her statement under Section 164 Cr.P.C was recorded on 7.2.2020. Subsequently statement of the prosecutrix-complainant under Section 161 Cr.P.C was recorded on 10.2.2020. During the course of investigation the mobile phone of the petitioner was recovered and sent for the examination in Forensic Laboratory. On the receipt of the report of Forensic Laboratory no porn videos/images were found on the mobile phone, as alleged by the prosecutrix. On conclusion of the investigation report under Section 173 Cr.P.C was filed under sections 354,

354-A I.P.C and section 8 of POCSO Act along with offences under Section 384 and 120-B I.P.C. At the time of framing of charge the petitioner was charged by the learned Trial Court for the offences under sections 354, 354-A, 384 and 120-B I.P.C. Thereafter, during trial the prosecutrix was examined as PW-1 and her statement was recorded. The prosecutrix deposed that while she was taking bath the petitioner recorded her obscene video/images. It is on the basis of her statement that application under Section 216 Cr.P.C was filed for amendment of the charge. Counsel has submitted that the allegations pertaining to making of obscene videos/images were since beginning, however, the same were not substantiated during investigation and hence the challan was presented and accordingly charges were framed. Counsel submits that the Trial Court has illegally accepted the improved version of the prosecutrix while appearing as PW-1 and hence the same could not have been relied upon for accepting the prayer for amendment of the charge. He has submitted that while comparing the statement of the prosecutrix at the time of lodging the FIR, with the statements under sections 161 Cr.P.C and 164 Cr.P.C and her deposition before the Trial Court as PW-1, no case is made out for allowing the application under Section 216 Cr.P.C for amendment of charge, as prayed for. He further submits that from the FSL Report it was established that the allegations regarding making obscene videos/images by the petitioner were found to be false and hence the ocular version of the prosecutrix was not corroborated and thus the Trial Court had no occasion to accept the application filed under Section 216 Cr.P.C. Counsel has placed reliance upon a judgment of this Court in ***Pavnesb Kumar Alias Rahul Vs. State of Punjab, 2020 (4) R.C.R (Criminal) 225*** to submit that

the impugned order is illegal and being unsustainable in the eyes of law, deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the case record carefully.

Admittedly the prosecutrix/victim is a minor. There are specific allegations against the petitioner and the co-accused since beginning. The victim had made specific allegations of her sexual abuse by the petitioner and the co-accused. There were specific allegations of having made her obscene videos/images and making it viral on social media. Though, as per the record at the time of submitting the charge sheet by the investigating agency, the FSL Report found the allegations regarding making obscene videos/images not substantiated. However the statutory provisions regarding amendment of the charge do not restrict the Trial Court from framing the charge on the basis of the prima facie material available before it. The statutory provision of Section 216 Cr.P.C is 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.”

Section 30 of POCSO Act reads as under:-

“Section 30 of Protection of Children from Sexual Offences Act, 2012 : Presumption of culpable mental state

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purpose of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Explanation- In this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.”

A bare reading of the above section is sufficient enough that there lies a presumption of culpable mental state. The ocular version of the victim is specific regarding the alleged offence. Whether the offence is made out or not would depend upon the appreciation of the complete evidence to be led before the Trial Court. However, at the time of framing of charge the court is to see the prima facie material available and the same was rightly appreciated by the Trial Court at the time of consideration of the

application filed under Section 216 Cr.P.C. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Reliance in this regard may be placed on the judgment of Hon'ble Apex Court in ***Dr. Nallapareddy Sridhar Reddy Vs. State of Andhra Pradesh & others, 2020(1) R.C.R (Criminal) 787.***

In view of the law settled and the material on record, this Court finds no infirmity in the conclusion arrived at by the learned Trial Court in accepting the application filed under Section 216 Cr.P.C and hence the same is affirmed by this Court.

Resultantly, the present revision petition being devoid of any merit is dismissed.

(RAJESH BHARDWAJ)
JUDGE

15.03.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No