

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

CRM-M-19269-2020

Date of Decision: 14.12.2022

Amrinder Pal Singh

...Petitioner

Versus

State of Punjab and Another

...Respondents

Coram: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Deepak Sabharwal, Advocate
for the petitioner.

Mr. Amish Sharma, AAG, Punjab

Mr. Umesh Aggarwal, Advocate,
for respondent No.2

JAGMOHAN BANSAL, J. (ORAL)

1. Through instant petition under Section 482 of Criminal Procedure Code, the petitioner is seeking setting aside of order dated 07.03.2020 (Annexure P-5) whereby the application of the prosecution for amendment of charge has been allowed.

2. The brief facts which are material and necessary for adjudication of present dispute are that on the complaint of Dalbir Singh, an FIR No.302 dated 10.09.2011 came to be registered against petitioner and his sister. The FIR was registered under Section 420, 467, 468, 471 of IPC. The police after completing investigation filed its final report under Section 173 Cr.P.C. The matter came up for consideration before Chief Judicial Magistrate, Amritsar who vide order dated 17.12.2013 (Annexure P-2) framed charges. For the ready reference, charge sheet is reproduced as below:

*“1. That on or before 10.9.11, in the area of court HDFC
Bank Mall Road, Asr you accused named above*

dishonestly cheated the complainant Dalbir Singh's daughter Gurbir Kaur by delivering her to forged Driving Licence and forged rent note and obtained the signatures of Gurbir Kaur on cheque and form and demanded Rs three lac on pretext of getting a job in the bank and thus you accused committed an offence punishable under section 420 IPC which is within my cognizance.

2. 2ndly, on the same date time and place, you obtained DL and rent note for providing job to Gurbir Kaur in the bank which are a valuable documents in order to cheat the complainant and thus you accused committed an offence punishable under Section 467 IPC which is within my cognizance.

3. 3rdly, on the same date time and place, you obtained DL and rent note for providing job to Gurbir Kaur in the bank which being a valuable document for the purpose of cheating and thus committed an offence punishable under section 468 IPC which is within my cognizance.

4. 4thly, on the same date and place, you accused obtained DL and rent note for providing job to Gurbir Kaur in the bank which are a valuable document and cheated the complainant by using the said document to be genuine and thus you both the accused committed an offence punishable under section 471 IPC which is within my cognizance which is within my cognizance.”

3. The prosecution during the course of trial, led its evidence. The prosecution examined 11 witnesses and after completion of prosecution evidence, statement of petitioner under Section 313 was recorded on 25.09.2019. The present petitioner examined one witness as DW-1 on 18.12.2019. The matter was fixed for final arguments on 27.02.2020 and at this stage, the prosecution moved an application dated 27.02.2020 seeking amendment of charge sheet on the ground

that charge sheet is not in consonance with the FIR. The present petitioner filed its reply contesting the application seeking amendment of charge sheet.

4. Learned trial Court, vide order dated 07.03.2020 allowed application of the prosecution and vide order dated 09.03.2020 framed fresh charge sheet. Relevant extracts of charge sheet dated 09.03.2020 are reproduced as below:

“1. That on or before 10.09.2011, you accused above named cheated Gurbir Kaur daughter of complainant Dalbir Singh by obtaining her signatures on some account opening form and cheques on the pretext of confirmation of your job in Kotak Mahindra Bank but thereafter issued legal notice demanding Rs. Three lac from Gurbir Kaur on the basis of aforesaid cheques and thereby you committed an offence punishable u/s 420 of IPC and within cognizance of this court.

2. Secondly on or before 10.09.2011, you accused above named forged driving license and rent note purported to be valuable securities in the name of Gurbir Kaur showing her as to be your wife and thus you accused committed an offence punishable u/s 467 of IPC and within cognizance of this court.

3. Thirdly on the same date and time, you accused forged driving license and rent note in the name of Gurbir Kaur intending that they shall be used for the purpose of cheating and thus committed an offence punishable u/s 468 of IPC and within cognizance of this court.

4. Fourthly on the same date and time and place you accused used as genuine driving license and rent note in the name of Gurbir Kaur forged by you which you knew at the time of their use that they were forged documents and thereby an offence punishable u/s 471 of IPC and within cognizance of this Court.”

5. Mr. Deepak Sabarwal, learned counsel for the petitioner would submit that fresh charge sheet is entirely different from earlier charge sheet. From the bare perusal of both the charge sheets, it is quite evident that prosecution had made out a totally different story. The prosecution led its witnesses and thereafter, petitioner led his defence witness. After closing of evidence of both sides, the prosecution had moved application seeking amendment of charge sheet which amounts to commencement of trial from initial stage. The prosecution in support of its case examined 11 witnesses who in view of charge sheet dated 17.12.2013, were cross-examined by the petitioner. The amendment of charge sheet amounts to filling up of lacuna. The FIR was registered on 10.09.2011 and fresh charge sheet has been issued on 07.03.2020. The petitioner has already suffered mental agony of about 9 years and if fresh charge sheet is issued at this belated stage, it amounts to not only violation of mandate of Section 216 of Cr.P.C. but also fundamental right of speedy trial guaranteed under Article 21 of the Constitution of India.

6. Learned State counsel as well learned counsel for respondent No.2 submit that fresh charge sheet is in consonance with the FIR. The allegation and averments made in the FIR are *parimateria* with charge sheet dated 09.03.2020. If charges are not amended, it would prejudice interest of the prosecution as well as complainant. They further submit that they have no objection if petitioner is permitted to lead his evidence afresh.

7. Before dwelling into issue involved and adjudication thereof, it is inevitable to look at Section 216 of Cr.P.C. which is reproduced as 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 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.”

8. A two judge of Hon'ble Supreme Court in ***P. Kartikalakshmi V. Sri Ganesh; 2017 (3) SCC 347*** while adverting with intent and scope of Section 216 has held:

“6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled

that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its

proceedings and the concept of speedy trial will get jeopardized.”

9. From the conspectus of above quoted Section 216 and judgment of Hon'ble Supreme Court, it can be gleaned that court is endowed with power to 'alter' or 'add' charge at any time before pronouncement of judgment. The power is exclusively vested in the trial court and neither prosecution nor accused can claim alteration or addition of charge as matter of right. The court is vested with wide and pervasive power to 'alter' or 'add' the charge sheet prior to pronouncement of the judgment, however, court cannot make out a new case i.e. change pith & substance or heart & soul of charge sheet. This discretionary power cannot be comprehended to include power to make out a totally new case. It is settled principles of law that where there is discretion, it cannot be exercised in an arbitrary and whimsical manner and it ought to be exercised with full circumspection and in a judicious manner. Existence of power and exercise of power are two different facets of administration of justice. In the absence of existence, either executive or judiciary cannot exercise power but where power exists, it must be exercised in just, fair and right manner. Exercise of power in an arbitrary manner is always antithesis to fundamental principles of law and it is anathema to rule of law which in turn is foundation of right of equality guaranteed by Article 14 and right to life and personal liberty guaranteed by Article 21 of the Constitution of India.

It is settled proposition of law that speedy trial is part of right of equality as well as life and personal liberty enshrined in Articles 14 & 21 of the Constitution of India.

10. FIR is foundation of commencement of investigation which concludes with filing of police report and charge sheet is foundation of trial which concludes with judgment of conviction or acquittal. The charges are framed to inform the accused that as per prosecution and trial court, prima facie, he is involved in commission of an offence disclosed in the charge sheet and he has to lead his defence accordingly.

Addition or alteration of charge may or may not prejudice the accused. In case, alteration or addition of charge prejudices the accused, court may either direct a new trial or adjourn the trial for such period as may be necessary.

11. In the case in hand, the trial Court framed charges under different Sections of IPC. The basis of invoking different provisions of IPC, were disclosed in the form of narration. In the charge sheet mere provisions of statute violated are not disclosed whereas narration which forms foundation of allegation of violation of law is also disclosed.

In the charge sheet dated 17.12.2013, the charges were framed under Sections 420, 467, 468, 471 of IPC and in the impugned charge sheet dated 09.03.2020 charges are framed under Sections 420, 467, 468, 471 of IPC. From the perusal of both charge sheets, it is evident that there is no change qua provision of IPC invoked, however, there is an entirely new case qua foundation of sections invoked. The prosecution has come out with a new set of story.

FIR was registered on 10.09.2011, charges were framed

on 17.12.2013, the prosecution concluded its evidence and statement

of accused under Section 313 Cr.P.C. was recorded on 25.09.2019, accused concluded its evidence on 18.12.2019, the matter was fixed for argument on 27.02.2020 and on this date an application for amendment of charge sheet came to be moved. The respondents did not seek amendment on the basis of evidence which had come on record at a later stage whereas the prosecution claimed and even before this court is claiming that while framing charges there was mistake in narration of facts and allegations.

12. Keeping in mind:

- (i) FIR was registered on 10.09.2011;
- (ii) Charges were framed on 17.12.2013 i.e. 7 years prior to filing application seeking amendment of charge sheet;
- (iii) Prosecution and defence had closed its evidence on 18.12.2019;
- (iv) Prosecution moved application at the stage when matter was listed for final argument;
- (v) Prosecution wants to rest foundation of its case on a totally new set of allegations which rather 'addition' or 'alteration' amounts to making of new charge;
- (vi) Impugned order has been passed on the application filed by prosecution and it is not a case where court its own has ordered to frame fresh charge sheet;
- (vii) No new evidence had come on record which compelled the trial court to pass impugned order;

this Court finds that it would not be in the fitness of things, interest of justice and principles of just, fair and speedy trial, if impugned order is allowed to stand. The present petition deserves to be allowed and accordingly allowed. Order dated 07.03.2020 (Annexure P-5) passed by CJM, Amritsar is hereby quashed.

(JAGMOHAN BANSAL)
JUDGE

14.12.2022
Mohit Kumar

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No