

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

CRM-M-49036-2018
Date of decision: 12.5.2022

Manu Kapur

... Petitioner

Versus

State of UT, Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Preetinder S. Ahluwalia, Advocate, for the petitioner.
Mr. J.S. Toor, Addl. Public Prosecutor, UT, Chandigarh.
Mr. B.D. Sharma, Advocate, for respondent No.2.

RAJESH BHARDWAJ, J.

The petitioner has approached this Court by way of the present petition impugning the order dated 11.01.2018 passed by the learned trial Court along with the chargesheet, whereby application for alteration of charge was allowed in a case FIR No.207, dated 09.11.2013, registered at Police Station, Sector 3, Chandigarh, for the offence punishable under Section 509 IPC including the impugned order dated 25.09.2018 passed by the learned Additional Sessions Judge, Chandigarh, whereby revision petition filed by the petitioner has been dismissed.

This case has a chequered history. The petitioner and respondent No.2-prosecutrix (hereinafter called 'prosecutrix') both are government officials in Haryana Civil Secretariat. The prosecutrix allegedly was being sexually harassed by the petitioner during her working hours. As she was allegedly time and again unabatedly being harassed, hence, having no other option, she filed the present FIR.

The sum and substance the allegations in the FIR are that the

prosecutrix was working as an Assistant in Finance Department, Haryana Government, whereas the petitioner was Personal Assistant with Secretary, Secretariat Establishment. It was alleged in the FIR that the petitioner alongwith one Survir Singh Negi started sexually harassing her by making unwarranted remarks and gestures. The harassment to the prosecutrix was continued by the petitioner and as a result, she filed a complaint before the Chief Secretary to Government of Haryana on 8.6.2010. On receiving the complaint, the authorities concerned constituted a committee of five members on 18.8.2010 as per the guidelines laid down by Hon'ble Supreme Court in Vishakha case, which was headed by Smt. Dheera Khandelwal, IAS Chairperson. After hearing both the sides, the committee submitted its report, wherein, as alleged, it was concluded that the allegations of preparing CD containing downloaded clipping of blue films by Manu Kapoor as a pressure tactic to blackmail and pressurize the prosecutrix for developing sexual relations with him, stood proved. The report of the committee allegedly was not given to the prosecutrix and she obtained the copy of the same under the RTI Act. Later on the case was closed with "Recorded Warning" on 18.2.2013 by the Chief Secretary. She further alleged that after having been let off with mild punishment of just recorded warning, the petitioner was promoted to the higher rank. However, thereafter he again started harassing her by commenting, 'KYA KAR LIYA MERA' I still have the CD in my possession. He started blackmailing her. She alleged that her allegations were duly proved by the Committee constituted. CD prepared by the accused petitioner was still in his possession and on the basis of which he was still threatening the prosecutrix. It was, therefore, prayed to register the FIR and prosecute the accused for the offence committed. Thereafter, the petitioner was arrested and the

challan was presented under Section 509 IPC on 21.12.2013. The trial Court framed the charges against the petitioner for the offence punishable under Section 509 IPC vide its order dated 17.2.2014. The prosecutrix approached this Court by way of filing of CRM-M-1457-2014 under Section 482 Cr.P.C. for issuing direction to the respondent for considering and incorporating the appropriate sections under the Information and Technology Act, 2005. After hearing, this Court dismissed the same vide order dated 11.01.2016. Thereafter, the prosecutrix filed an application under Section 216 Cr.P.C. for framing additional charges under Sections 354/354-A/354-D/469 IPC on 11.07.2016 before the learned trial Court. The learned trial Court issued notice to the petitioner and after hearing, declined the same vide its order dated 17.09.2016 by observing that no fresh evidence or prima-facie ground made out to alter the charges, already framed. The trial proceeded and the statement of the petitioner was recorded under Section 313 Cr.P.C. on 20.02.2017. Hereinafter, the prosecutrix again filed an application under Section 216 Cr.P.C. for framing of additional charges under Sections 354/354-A/354-D/469 IPC on 14.03.2017. The trial Court again issued notice to the petitioner and heard both the parties. This time the trial Court, after hearing both the parties partially allowed the application and altered and amended the charges by adding the offences punishable under Sections 354/354-A/354-D IPC along with Section 509 IPC vide its order dated 11.01.2018. Amended charges were framed against the accused on the same date, i.e., 11.01.2018. Being aggrieved, the petitioner challenged the same by way of filing revision petition before the learned Additional Sessions Judge, Chandigarh. On hearing both the parties, the revisional court dismissed the same vide its order dated 25.09.2018 by observing that the plea raised before the Court

may be advanced before the Magistrate at the final stage of trial of criminal case and the learned Magistrate would be bound to consider the same and decide the criminal case in accordance with law. However, the revision petition filed was dismissed having no merits. Aggrieved by the impugned orders dated 11.01.2018 & 25.09.2018, the petitioner has approached this Court praying for quashing of the same.

Learned counsel for the petitioner has vehemently contended that both the Courts below have fallen in error in accepting the prayer made by the prosecutrix, for prosecuting the petitioner by adding offence punishable under Sections 354/354-A/354-D IPC. He contends that initially the charges under Section 509 IPC pertaining to the incident of January 2009 were framed, whereas by the impugned order dated 11.01.2018 additional charges have been framed for the offence under Sections 354/354-A/354-D IPC. He has submitted that Sections 354/354-A/354-D IPC have been incorporated by the legislature on 03.02.2013 by an amendment and hence, for the offence committed prior to the amendment, no charges could have been framed against the petitioner for the offence under Sections 354/354-A/354-D IPC, as these sections were not in the statute books on the date of occurrence. He has submitted that after framing of charges by the trial Court on 17.02.2014, the prosecutrix approached this Court by way of filing CRM-M-1457-2014 praying for issuing of directions to the investigating agency to add offence under the Information and Technology Act, 2005 in the FIR. He submits that after considering the arguments of both the sides, this court had dismissed the same vide its order dated 11.01.2016. He submits that even in the said petition, there was no whisper by the prosecutrix for the offence committed under Sections 354/354-A/354-D IPC. He

advanced his arguments that having failed to secure a direction from this Court, the prosecutrix again filed an application under Section 216 Cr.P.C. for amending the charges by adding offence under Sections 354/354-A/354-D/469 IPC on 11.07.2016. He submits that the trial Court heard both the parties and perused the record and by observing that there was no new ground or allegation brought before the trial Court since the framing of charges, and having no fresh evidence or prima facie having no ground made out, the application filed sans merits and, thus, dismissed it on 17.9.2016. He submits that after dismissal of the application, the same was never challenged further and thus the order of dismissal dated 17.09.2016 attains finality. He submits that the trial advanced further and statement of the petitioner was recorded by the trial court under Section 313 Cr.P.C. on 20.02.2017. He has submitted that the statement of the prosecutrix was recorded by the trial Court as PW2 from 12.10.2016 to 03.01.2017. However, the second application was filed by the prosecutrix mischievously on 14.03.2017, i.e., even after recording of the statement of the petitioner under Section 313 Cr.P.C. on 20.02.2017. He has submitted that in view of the Constitutional provisions of Article 20(1), the application filed by the prosecutrix had no legal sanctity as the petitioner could not have been prosecuted for the offences which were not even there in the Statute books at the time of occurrence. The reading of the chargesheet dated 17.02.2014 would make it crystal clear that the petitioner was being prosecuted for the alleged offence occurred in the month of January, 2009 in the area of Haryana Civil Secretariat, Chandigarh and, thus, there was no occasion for the court to accept the repeated application(s) filed by the prosecutrix for altering the charges under Section 216 Cr.P.C. for the offence which found place in the Statute books after the alleged

occurrence. He submits that the learned trial Court has illegally accepted the application filed by the prosecutrix vide its order dated 11.01.2018. He submits that the petitioner duly challenge the same by filing a revision petition before the learned Additional Sessions, Chandigarh, who again committed the illegality in upholding the order passed by the learned trial Court. Hence, the petitioner was left with no other remedy than to file this petition under Section 482 Cr.P.C. He has submitted that the present petition is not the second revision petition but the petitioner has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. and this Court has ample power for entertaining the genuine grievance raised by the petitioner. He has relied upon a decision of the Hon'ble Supreme Court rendered in **Krishnan v. Krishnaveni and another, 1997(1) RCR (Criminal) 724**, wherein the Apex Court has held that the petition filed in such like situation is maintainable under Section 482 Cr.P.C.

Learned counsel for the petitioner has vehemently contended that the Court is well within its power to invoke the provisions of Section 216 Cr.P.C. even suo motu at any stage before the pronouncement of the judgment. However, the overwhelming facts of the case are self speaking that the prosecutrix has been approaching this Court and the trial Court time and again by filing various petitions. He submits that the alleged harassment caused to the prosecutrix by the petitioner was very much in the knowledge of the prosecutrix, however, there is no whisper of the same pertaining to the harassment before the amendment of 2013. Even thereafter, she had been filing various applications before the trial Court or before this Court but no specific allegation has been levelled by the prosecutrix. However, when the trial of the case reached at the stage

of recording of the defence witnesses, she clandestinely filed the application for amendment of the charges. The timing at which the application has been filed would show that the same has been filed after due deliberation with the single motive to prolong the trial.

Sections 216 and 217 of Cr.P.C. read 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.

217. Recall of witnesses when charge altered. Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

(a) to recall or re- summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re- examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.”

Learned counsel for the petitioner submits that a perusal of Section 217 Cr.P.C. makes it clear that once the application filed under Section 216 Cr.P.C. is accepted by the Court, it would virtually amount to *de novo* trial as all the prosecution witnesses are to be recalled. As the present application is false and frivolous, the acceptance of the same would defeat the noble purpose for which the legislature has enacted this Section 216 Cr.P.C., thus, the same would cause serious prejudice to the petitioner. Thus, he submits that both the impugned orders deserve to be set aside in the interest of justice.

Learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioner tooth and nail. He has questioned the maintainability of the present petition. He submits that the petitioner had duly challenged the order dated 11.1.2018 passed by the learned trial Court accepting application under Section 216 Cr.P.C. before the revisional Court. He submits that once the revisional Court had passed its order, the further remedy available with the petitioner was to approach the learned JMIC for redressal of his grievance and not filing of the second revision under the garb of the present petition under Section 482 Cr.P.C. Learned counsel for respondent No.2 has further submitted

that the prosecutrix was being harassed by the petitioner even after the amendment of Section 354 IPC i.e. after 3.2.2013 as well. He submits that the offence under Section 354 IPC was very much in the statute books even prior to the amendment and thus, the learned trial Court had initially fallen in error in not framing the charges even under Section 354 IPC at the first instance when the charges were framed by the trial Court on 17.2.2014. He submits that when the prosecutrix filed her first application under Section 216 Cr.P.C. the same was declined by the trial Court on 17.9.2016 with the observation that no fresh evidence or prima facie ground is made out and hence, it was dismissed at that stage. He submits that thereafter, the prosecutrix was examined by the trial Court as PW-2 and she deposed in her statement recorded about sexual harassment caused by the petitioner persistently which continued even after the year 2013 and thus, there was change of circumstances and fresh evidence had come on the record. Thus, the application filed by the prosecutrix under Section 216 Cr.P.C. on 14.3.2017 suffers from no illegality and was very much maintainable. He has submitted that the trial Court on earlier occasion had declined to alter the charges under Section 216 Cr.P.C. for the simple reason that the prosecutrix had not been examined and hence, there being no fresh evidence, it was declined only at that stage and after her examination as PW-2, the circumstances had changed and fresh evidence had come on the record and as per the mandate of Section 216 Cr.P.C., the trial Court was very much within its jurisdiction as Section 216 Cr.P.C. empowers the Court to invoke its power at any stage before the pronouncement of the judgment.

Learned State counsel in all his fairness has submitted that as a friend of Court, after a thorough investigation no material

was found pertaining to the offence under the Information Technology Act, 2005. He has submitted that the allegations pertaining to the making of obscene video of the prosecutrix and making the CD of the same were never substantiated during the investigation, thus, there was no occasion for the investigating agency for having recovered any CD as alleged. Hence, the allegations pertaining to the offence under the Information Technology Act, 2005 were found to be without any basis. The investigating agency conducted a thorough and fair investigation and presented the challan of which the learned trial Court had already taken the cognizance.

Heard learned counsel for the parties and perused the record.

Apparently, the case has a chequered history and the parties before this Court are litigating for the last so many years. No doubt, the petitioner has availed the remedy of revisional jurisdiction by filing revision petition before the learned Additional Sessions Judge, Chandigarh impugning the order dated 11.1.2018. There is no dispute regarding the statutory provisions of Section 397 Cr.P.C. where Section 397(3) Cr.P.C. bars filing of second revision petition. However, accepting the argument raised by learned counsel for respondent No.2 that hereinafter only remedy available with the petitioner was to approach the learned JMIC and make his grievance before him, amounts to leave the petitioner without any further remedy. Learned counsel for the petitioner has rightly argued that this Court is well within its jurisdiction by invoking its power under Section 482 Cr.P.C. by entertaining the present petition. I am in agreement with the argument raised by learned counsel for the petitioner that even under Section 483 Cr.P.C., the High Court has the continuous superintendence power over the Courts of Judicial

Magistrate and thus, he has relied upon **Krishnan's** case (supra), wherein Hon'ble the Supreme Court has held in emphatic terms that after availing the remedy under Section 397 Cr.P.C. by a party the High Court is well within its power to entertain the petition under Section 482 Cr.P.C. Thus, Hon'ble Apex Court has settled the law in no uncertain terms that after the dismissal of the revision petition by the revisional Court by the Additional Sessions Judge, petition under Section 482 Cr.P.C. is maintainable. The aggrieved party can approach the High Court by way of filing petition under Section 482 Cr.P.C. Thus, the present petition is maintainable. The prosecutrix has availed the remedy for redressal of her grievance after framing of charges by the trial Court. She approached this Court firstly for issuance of direction for adding the offence under the Information Technology Act. However, this Court found no favour with the arguments raised and dismissed the same and thereafter the charges were framed by the trial Court on 17.2.2014 for the offence under Section 509 IPC. The period for which the grievances were raised by the prosecutrix evidently was from the years 2009 to 2013. However, on the first occasion, application filed under Section 216 Cr.P.C. was declined by the trial Court vide its order dated 17.9.2016 by observing that there were no fresh evidence on record. Admittedly, this order was never challenged further and thus attained the finality. However, thereafter when the trial reached at the stage of recording of defence evidence, the prosecutrix again filed an application under Section 216 Cr.P.C. for altering the charges as already prayed. This time, the learned trial Court accepted the petition filed on the ground that after recording her statement before the learned trial Court fresh evidence has come on record. There were allegations of harassment being caused to the prosecutrix even after the year 2013 i.e. the period

when the amendment of IPC was made and Sections 354-A/354-D IPC were added in the Statute books. Even otherwise, as per the allegations the offence under Section 354 IPC was very much there since beginning i.e. even prior to the amendment. The petitioner thereafter availed the remedy of revision and the revisional court though dismissed the revision petition filed by the petitioner, however, the observation was made that the Court of Magistrate is the prime court for dealing with the grievance raised by the parties concerned. Thus, full opportunity had been granted by the revisional court to the parties to raise all the grievances and the Magistrate was directed to deal with the same as in accordance with law.

It is apparent from the perusal of the order impugned before this Court i.e. order passed by the learned Magistrate dated 11.1.2018 that the arguments of learned counsel for the petitioner to the amendment of Section 354 IPC w.e.f. 3.2.2013 and protection to the petitioner as envisaged under Article 20(1) of the Constitution of India, were nowhere appreciated by the learned Magistrate. On the other hand, the learned revisional Court though directed the matter to be considered by the learned Magistrate, however, the revision petition filed by the petitioner was dismissed. Resultantly, there arose ambiguity whether the impugned order dated 11.1.2018 passed by the learned Magistrate was upheld or rejected? This Court is in agreement with the observation of the revisional Court that the matter concerning charges should be left with the wisdom of learned Magistrate, however, simultaneously dismissing the revision petition would result in creating an ambiguity for the learned Magistrate to reconsider the case afresh by granting the liberty to both parties to raise all their grievances. Resultantly, both the impugned orders dated 11.1.2018 and that of dated 25.9.2018 are set aside.

The parties are relegated to appear before the Magistrate. All the grievances raised before this Court would be advanced before the learned Magistrate, who would take into consideration the complete material produced before it and arguments advanced by the parties for the issue involved of invoking the jurisdictional power under Section 216 Cr.P.C. afresh and decide the same in accordance with law.

The petition is disposed of with abovementioned terms.

This Court would be failing in its duty in not appreciating the exemplary assistance provided by the learned counsel for the parties, Mr. Preetinder S. Ahluwalia, learned counsel appearing for the petitioner, Mr. B.D. Sharma, learned counsel for respondent No.2, and Mr. J.S. Toor, learned Additional PP, UT, Chandigarh.

(RAJESH BHARDWAJ)
JUDGE

12.5.2022
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No