

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

119

CRR-1383-2022

Date of decision :28.07.2022

LALA @ RANVIR

...PETITIONER

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Johan Kumar, Advocate for the petitioner.

Ms. Mahima Yashpal, AAG, Haryana for the respondent-State

SUVIR SEHGAL, J.

CRM-26369-2022

For the reasons given in the application, it is allowed. Typed copy of the medical report of the victim is taken on record as Annexure P-9.

Main Case

Instant revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (for short – “the Code”) challenging order dated 10.05.2022 passed by Special Court, ASJ (Fast Track), POCSO, Palwal whereby application filed by the prosecution under Section 216 of the Code has been accepted and charges framed against the accused petitioner have been ordered to be altered.

Facts, in brief, leading to the filing of the petition are that FIR No.320 dated 23.12.2019 has been lodged at Police Station, Hasanpur, District Palwal, Annexure P-1, for offences under Sections 354-A, 354-B and 506 IPC and Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short – “the POCSO Act”) on the statement of a father of a five year old girl (for short – “the victim”) on the allegation that when his daughter, who had gone out of the house to play, came back, she was crying. On asking, she told that Lala uncle (Tau), present petitioner, has bitten her on her mouth and had also taken off her clothes. She said that he threatened to eliminate her in case she discloses this incident to anyone. After investigation, challan, Annexure P-2, has been presented and charge has been framed against the petitioner under Sections 354-A, 354-B, 506 IPC and Section 10 POCSO Act.

During the course of evidence, the prosecution filed an application, Annexure P-4, under Section 216 of the Code for alteration of the charge, which has been contested by the petitioner by filing reply, Annexure P-5. Application has been accepted by the trial Court vide order, impugned herein, by framing a charge under Section 6 of the POCSO Act.

Counsel for the petitioner has urged that no evidence or material has come before the trial Court during the course of evidence to justify the framing of the charge under Section 6 of the POCSO Act. He has argued that there is no allegation of biting on the private parts of the victim in the FIR. He has placed reliance upon the judgments of the Supreme Court in Ishwar Chand Ami Chand Govadia and others versus State of

Maharashtra and another, 2006 (10) SCC 322 and CBI versus Karimullah Osan Khan, 2014 (11) SCC 538 to support his submission.

Per contra, learned State counsel, who has been served with an advance copy, has opposed the petition by making a reference to the statement of the prosecutrix under Section 164 of the Code as well as her medical examination.

I have heard counsel for the parties and examined the material placed on the record.

It has been held by the Supreme Court that the trial Court has wide powers to alter or amend the charge at any stage of the proceedings before the pronouncement of the judgment. In **Karimullah's** case (supra), Supreme Court has held that this power can be exercised only when there exists material before the Court, which has some connection or link with the charges sought to be amended, added or modified.

When examined in the backdrop of the above interpretation and judicial pronouncement, this Court is satisfied that there is sufficient material before the Court to modify the charge. In her statement recorded before the Magistrate on 24.12.2019, Annexure P-8, the victim has stated that the accused bit her on her private part and also on her mouth. She has complained of pain in her private part. She stated that the petitioner allured her and told her that he will give her money and something to eat. The statement is supported with the MLR, Annexure P-9 of the victim and the doctor examining her has opined that there is redness over "labia majora". Although counsel for the petitioner has tried to explain the redness by submitting that it was due to a tight undergarment but the same would

remain a subject matter of defence and does not need to be examined. At the stage of alteration of the charge, the Court is not required to conduct a roving inquiry and the material is not to be weighed as if the trial is being conducted.

In view of the above discussion, this Court is of the view that there is sufficient material before the Court to order alteration of the charge.

Finding no merit in the petition, it is hereby dismissed.

Needless to mention, anything said hereinabove shall not be construed to be an expression of opinion on the merits of the case and the trial Court shall proceed with the trial uninfluenced by the same.

28.07.2022
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No