

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

Sr.No.250

CRR-4151 of 2017

Date of decision: 10.08.2022

Rajesh

.....Petitioner

VERSUS

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Sunil Saharan, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Hemant Bassi, Advocate
for the complainant.

VINOD S. BHARDWAJ, J. (Oral)

Present revision petition has been filed against the order dated 12.09.2017 passed by the Additional Sessions Judge, Fatehabad, in Case No.12-SC dated 14.08.2014, whereby an application filed by the petitioner under Section 216 Cr.P.C seeking amendment of the charge and for framing charge under Sections 302, 328, 420 read with Section 34 of IPC had been dismissed.

The FIR in the present case was registered on the statement of Rajesh Kumar, which reads thus:-

“Stated that I am the resident of above mentioned address and is an agriculturist. Today i.e. 22.05.2014 at about 7:00 a.m., I received a message that my cousin brother Dharambir Singh son of Sh. Sant Lal, Caste Jat, resident of Villate Banmandori, is lying

unconscious near Mangla minor bridge. Thereafter, I arranged a vehicle and reached the spot and found that Dharambir was lying unconscious near Mangla minor bridge and when I asked what has happened to you, then Dharambir told me that Krishan and his two sons administered him poison and thereafter, he became unconscious. I put him in the vehicle and admitted him in Siwach Hospital, Bhattu Kalan. The doctor told me that he has consumed poison. Then I immediately informed Sumitra Devi, mother of Dharambir and his wife Suman through telephone. After sometime Sumitra and Suman reached in the hospital where he got admitted and doctor started his treatment. That Dharambir is in unconscious condition. That Dharambir tell the true story when he would be conscious. You came and statement got recorded to you, heard and is correct. Appropriate action may kindly be taken.

Sd/- Rajesh.”

Upon completion of investigation, final report under Section 173 Cr.P.C was filed. Since the case was triable by the Court of Sessions, it was committed to the said Court and charge under Sections 356/34 IPC was framed by the Court despite the prosecution request to prove a charge under Section 302/34 IPC. The aforesaid order was challenged by means of filing Criminal Revision petition No.3468 of 2014 before the High Court and the same was withdrawn. A liberty was however granted to the petitioners to move an application under Section 216 Cr.P.C, at an appropriate stage.

An application under Section 216 Cr.P.C was thereafter filed but the same was dismissed on 09.09.2015. The said order was not challenged and after reading of testimony of two more witnesses, another application under Section 216 Cr.P.C was filed. The same was dismissed vide order dated 12.09.2017, which is now impugned in the present petition.

Learned counsel appearing on behalf of the petitioner contends that the petitioner, in his initial version, named that his deceased cousin Dharmbir Singh had been taken by him in an unconscious condition to the hospital and after reaching at the hospital and his regaining consciousness, the deceased Dharmbir Singh had informed him before his death that he was forcibly administered poison by Krishan Kumar and his two sons namely, Surinder Singh and Anil. The petitioner himself appeared and testified the same as prosecution witness-9. The aforesaid disclosure made by the deceased Dharmbir Singh is in the nature of a dying declaration and that accordingly, charge under Section 302 read with Sections 328, 420 as well as 34 IPC ought to have been framed and that the application moved by the petitioner has been wrongly dismissed.

Per contra learned counsel appearing on behalf of the respondent-State of Haryana, assisted by the learned counsel appearing on behalf of respondents No.2 and 3, has contended that a detailed and thorough investigation was conducted by the investigating agency where upon it came to a conclusion that the deceased Dharmabir Singh had himself consumed the pesticide. Consequently, final report under Section 173 Cr.P.C had been filed for commission of offences under

Section 306/34 IPC. He contended that arguments on the question of charge were duly addressed by the respective parties and charge under Section 306/34 IPC was framed against the respondents after passing a detailed order on 02.09.2014, The aforesaid order framing charge was subject matter of challenge in CRR 3468 of 2014, however, the said petition was withdrawn with liberty to move another application seeking an alteration of charge after recording of the statement of the complainant. Thereafter, an application under Section 216 Cr.P.C was moved by the petitioner for alteration of the charge which was dismissed vide order dated 09.09.2015. The said order was not challenged and has attained finality.

Without challenging the aforesaid order dated 09.09.2015, yet another application under Section 216 Cr.P.C was moved by the petitioner on 13.09.2016 after two more prosecution witnesses viz. Sumitra mother of Dharmbir Singh and Rai Singh had been examined. The said application was dismissed by the trial Court vide order dated 12.09.2017, thus, leading to the filing of the present petition.

Learned counsel appearing on behalf of the complainant points out that during the pendency of the present petition, the prosecution evidence stood concluded and even statement under Section 313 Cr.P.C was recorded whereafter, an order was passed on 20.02.2018 staying passing of the final order passed by the trial court.

Further reference is made to the following discussions/observations recorded by the trial Court while dismissing the present application under Section 216 Cr.P.C filed by the petitioner:-

“7. In the present case FIR was recorded on the statement Ex.P21 given by Rajesh wherein he stated that on 22.5.2014 at about 7 am he received a message that his cousin brother Dharambir son of Sant Lal resident of villate Banmandori was lying unconscious near Mangla minor bridge. He arranged for a vehicle and reached at the spot. There he found Dharmbir lying near the bridge and on enquiry Dharambir told him that Krishan Kumar and his two sons forced him to consume poison and thereafter he became unconscious. Thereafter, Dharambir was brought to Siwatch Hospital and was admitted there. Doctor informed him that Dharambir had consumed poison. Then he informed Sumitra Devi mother and Suman wife of Dharambir about the same.

8. Initially FIR under section 328/34 IPC was registered and subsequently after death of Dharambir on 26.5.2014 section 302 of IPC was added. During investigation statement of complainant Rajesh and other witnesses under section 161 of Cr.P.,C as recorded and spot inspection was conducted by the Investigating officer. After

conclusion of investigation, the police reached at the conclusion that there was no sign of forcible poisoning and at the scene of crime also nothing was found and there was no recovery of poison or any other article with which accused persons allegedly forced deceased Dharambir to consume poison was found. On 27.5.2014 statement of Vijay Kumar was recorded who stated that deceased had purchased pesticide from him. After completion of investigation challan under section 306/34 IPC was filed against the accused persons.

9. *Vide order dated 2.09.2014 this court came to the conclusion that prima facie case under section 306/34 IPC is made out against the accused persons and not under section 302/34 IPC from the charge sheet submitted by the prosecution. After framing of charge and after examination of nine prosecution witnesses including part cross-examination of complainant Rajesh who appeared as PW-9, complainant Rajesh moved an application under section 216 Cr.P.C for alteration of charge as prayed in the present application. Said application*

was dismissed vide detailed order dated 9.9.2014 and one of the reason given by the court is that cross-examination of PW9 Rajesh was not completed. Now again after conclusion of entire prosecution evidence, complainant had filed the present application under section 216 of Cr.P.C for alteration of charge and prayed that charge under sections 302/328/420 IPC be framed against the accused persons.

10. Complainant Rajesh has mainly relied upon his own testimony for alternation of charge. Complainant Rajesh appeared as PW9 and deposed that on 22.05.2014 at about 7:30 am Om Parkash called him from the bank of Mangla canal informing him that his brother Dharambir was lying on the other side of the bridge of the canal. He then came from his Dhanbi and reached at that place. On reaching there he found Dharambir lying on the ground and none else was present there. On enquiry Dharambir told him that he has been forcibly given poison by Krishan, Surender and Anil. After 4-5 minutes Dharambir became unconscious. PW12 Sumitra mother

of Dharambir also stated that Rajesh told him that Dharambir stated to him he was forcibly poisoned by Krishan and his sons. Evidence of PW12 Sumitra is only an hearsay evidence. Therefore, for alteration of charge complainant has relied upon his own testimony. But there are other evidence on the file from which it prima facie proves that forcibly poison was not administered to Dharambir. Prosecution has examined Dr. Narender Sharma MOGH, Adampur who conducted the postmortem of deceased Dharambir and he stated in his cross-examination that there was no sign of forcible sign of poisoning on body. PW2 Dr. Virender Switch where deceased Dharambir was taken immediately on 22.05.2014 stated in his cross-examination that Sumitra did not give any history of forcible poisoning to the patient by and third person. He also stated that since there was no signe of injury on the lips, face and body of Dharambir so possibility of self taking of poissson by Dharambir cannot be ruled out. Even during the investigation nothing was found at the place of occurrence from which it

could be presumed that deceased Dharambir was forcibly given poison by the accused person as there was neither any sign of vomit or any other sign which could indicate forcible poisoning. Even in statement Ex._21 given by complainant Rajesh to the police on the basis of which present case was registered, initially it was mentioned that on 22.01.2014 at about 7 a.m he received information that his cousin brother Dharambir son of Sant Lal was lying unconscious on the bridge of Mangla canal. Complainant Rajesh appearing as PW9 also stated that he had given statement Ex.P21 to the police and he nowhere stated that police had not recorded his statement correctly. If deceased Dharambir was lying unconscious even when complainant Rajesh received the information then there was no occasion for deceased Dharambir to tell Rajesh regarding forcibly giving poison to him by the accused persons. It was Om Parkash who had informed Rajesh regarding his brother Dharambir lying near Mangla canal bridge but said Om Parkash was not examined by the prosecution and given up

on the application of the complainant having colluded with the accused persons.”

By referring to the aforesaid extract, learned counsel appearing on behalf of the respondents have contended that no fresh cause of action or evidence had arisen consequent upon deposition made by the other two witnesses. So far as PW-Sumitra is concerned, she is mother of deceased Dharmbir Singh and is only a hearsay witness and could not testify anything further. They further contend that even the evidence of PW Rai Singh is inconsequential and does not relate to the forcible administration of poison to the deceased Dharmbir Singh. They thus, contend that reliance during the course of arguments was only on the testimony of PW-9 Rajesh i.e. the petitioner herein which such testimony had already been considered by the trial court while dismissing the earlier application moved by the petitioner under Section 216 Cr.P.C. vide order dated 09.09.2015. The present application is a reiteration of the earlier application that had been filed and had already been considered and not found favour with the trial Court. The said order had become final. Moving of the present application or raising a challenge to this order can not be deployed as a means to circumvent an adverse order already passed and to wriggle out of the finality of the said order. No reference to any fresh evidence in the testimony of the said two witnesses has been pointed out as would give a fresh cause of action to the petitioner to move a separate application under Section 216 Cr.P.C.

Learned counsel appearing on behalf of the petitioner does not dispute that the earlier application, moved after recording of the

testimony of the petitioner as PW-9 was dismissed vide order dated 09.09.2015 and had not been challenged. It is also not disputed that the evidence of the doctor as referred to by the trial Court does not substantiate any forcible administration of the poisonous substance. He could not indicate any evidence as would render the testimony of the said expert witness i.e. doctor unworthy of acceptance or to be suffering from inherent improbabilities or unlikelihood. Further, no reference could be made to any evidence to substantiate that the opinion given by the doctor was not based on sound appreciation of medical jurisprudence.

Having heard learned counsel appearing on behalf of respective parties and having gone through the impugned order and the documents appended alongwith this petition, it has gone uncontroverted that a detailed order was passed at the stage of framing of charge after dealing with all the submissions advanced by the respective parties, on 02.09.2014. The revision against the said charge was withdrawn from the High Court with liberty to move an application for seeking alteration of charge. The application so moved was thereafter, dismissed by a detailed order on 09.09.2015(wrongly mentioned in the impugned order as 09.09.2014). The said order had not been challenged by the petitioner and instead a fresh attempt was made by moving a second application even though no better qualitative evidence had come on record.

The submission of the counsel that the petitioner had specifically named the respondents and referred to the dying declaration of the deceased about the manner in which the offence was committed

prima facie reflecting existence of the ingredient punishable for offence under Sections 302/328/420/34 IPC can not be accepted at this stage especially when said argument stands repeated successively on two occasions, and once before the High Court and also when the other evidence that has come on record also does not corroborate the ocular version of the petitioner.

The Court while altering a charge, can not remain oblivious and turn a blind eye to the corroborative/contradictory evidence which has already come on record and abide by the test of a *prima facie* case on the testimony of one singular witness/evidence. I find that there is no infirmity or impropriety in the order passed by the trial Court.

The Court cannot be expected to give the probative value of the evidence already on record of the case merely by referring to one ocular and uncorroborated testimony of a witness which had been considered earlier, only to be rejected. The Court would infact be causing travesty of justice in case it would still alter the charge disregarding the probative value of the entire evidence brought before it. Procedural law intends to promote ends of justice and cannot be deployed for incarceration or to advance injustice.

Present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

10th August, 2022
Shivani Kaushik

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