

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(125)

CRR-1840-2022 (O&M)
DATE OF DECISION:- 30.09.2022

SARABJIT SINGH

...PETITIONER

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Maninder Arora, Advocate for the petitioner.

Mr. P.S.Grewal, DAG, Punjab for respondent-State.

SUVIR SEHGAL, J. (Oral)

CRM-36834-2022

Noticing the prayer made in the application, it is allowed.

Marriage Certificate dated 13.08.2018 is taken on record as
Annexure P-11, subject to all just exceptions.

Main case

Instant revision petition has been filed under Section 397 of the Code of Criminal Procedure, 1973 (for short “the Code”) impugning order dated 24.08.2022 passed by learned Additional Sessions Judge (Fast Track Special Court), Ludhiana, whereby application, Annexure P-9, filed by the prosecution for amendment of charge has been accepted.

Facts, in brief, leading to the filing of the instant petition are that FIR No.121 dated 16.08.2018 has been lodged at Police Station Sadar Raikot, Ludhiana, Annexure P-4, for offences under Sections 363, 366-A, 420, 467, 468 and 471, IPC and Sections 11 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short “the POCSO

Act”) on the statement of father of a sixteen year old girl (hereinafter referred to as “the prosecutrix”) on the allegation that she has been enticed by Sarabjit Singh, who is working as a *Tantrik* and has been visiting their house regularly for the last one year, on the pretext of marriage. The prosecutrix was recovered from the custody of the accused, who was apprehended and on completion of investigation, challan was presented on 05.12.2018. The case was committed to the Sessions Court and charge under Sections 363, 366, 120-B, 467, 468, 471 and 420, IPC and Section 12 of POCSO Act was framed against the accused-petitioner on 17.12.2019. After the examination of the complainant and the prosecutrix, prosecution filed application, Annexure P-9, for amendment of charge and for addition of Section 376, IPC, which upon contest by the accused-petitioner, has been allowed vide order impugned herein and proceedings have been fixed for framing amended charge sheet.

By making a reference to orders, Annexures P-1 to P-3, passed by this Court as well as to the Marriage Certificate, Annexure P-11, counsel for the petitioner has contended that the prosecutrix had married the petitioner and offence under Section 376, IPC or under Section 6 of the POCSO Act is not made out. He has invited the attention of the Court to the statement of the prosecutrix recorded under Section 164 of the Code, Annexure P-5, as well as to the MLR, Annexure P-6, to urge that the Court has erred in ordering alteration of the charge as it is not supported from the documents in possession of the prosecution. He has placed reliance upon the judgment of the Supreme Court in *Bhadresh Bipinbhai Sheth Versus State of Gujarat and another, 2015(4) RCR*

(*Crl.*) 199 and judgment of a Co-ordinate Bench of this Court in *Mohd. Samim Versus State of Haryana, 2019 (1) RCR (Crl.) 685*.

Petition has been resisted by the State counsel, who has been served with an advanced copy of the paper-book. He has referred to the report of the Chemical Examiner as well as the testimony of the complainant and the prosecutrix, who have been examined as PW-2 and PW-3, respectively, to support the order under challenge.

Arguments addressed by the counsel for the parties as well as the documents appended with the paper-book have been considered.

Examining the power vested in the Court to alter a charge, Hon'ble Supreme Court in *Jasvinder Saini and others Versus State (Govt. of NCT of Delhi) (2013) 7 SCC 256* has held that a plain reading of Section 216 of the Code would show that the power of the Court is unrestrained provided that such addition and/or alteration in the charge is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 *ibid*, deals with the procedure to be followed once the Court decides to amend a charge. It has been held that there is no doubt about the competence of the Court to add or alter a charge at any time before the judgment, though the circumstances in which such addition or alteration may be made are not stipulated in the said provision. Apex Court has held that the question of any such addition or alternation would generally arise either because the Court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the Court.

Facts of the present case have to be examined in the backdrop of the above interpretation. The complainant in his deposition before the Court has supported the allegations levelled against the accused in the FIR. The prosecutrix, who has stepped into the witness box as PW-3, has specifically deposed that Sarabjit Singh, present petitioner, along with Gurjit Singh came in a vehicle with a driver and forcibly made her sit in the car. She was threatened that in case she did not accompany them, she and her family members will be eliminated. A forged Marriage Certificate with Sarabjit Singh was obtained from a Gurudwara and the accused took her to an Advocate where they obtained her signatures on various blank papers by threatening her. She was kept at various places at Chandigarh and Rajpura and at the house of accused-Gurjant Singh. It has been specifically stated by her that Sarabjit Singh sexually assaulted her during this period and on 09.10.2018, she and accused-Sarabjit Singh were apprehended from bus stand at Malerkotla. She has also produced her Birth Certificate and has stated that she is sixteen year of age. When confronted with her statement recorded under Section 164 of the Code, she has stated that it was made by her as she had been intimidated by the accused. Furthermore, report of the Chemical Examiner prepared on 09.10.2019, which is a part of the paper-book, shows that Spermatozoa has been detected.

From the material, which has come on the record during the course of evidence, case for alteration of charge is clearly made out. Annexures P-1 to P-3, as well as the Marriage Certificate, Annexure P-11, are not required to be considered by the Trial Court at the time of framing or amending of the charge. Still further, it may be mentioned that

at this stage, the Court is not required to conduct a roving enquiry into the pros and cons of the matter and the evidence is not to be weighed as if the trial is being conducted. Suffice is to say that there is a sufficient material for amendment of the charge sheet and the impugned order does not call for any interference. The judgments, upon which reliance has been placed by counsel for the petitioner, are not applicable to the facts of the present case. In *Bhadresh Bipinbhai Sheth*, Hon’ble Supreme Court granted anticipatory bail to an accused as offence under Section 376, IPC had been added after thirteen years of the registration of the FIR. In *Mohd. Samim*, this Court was dealing with a petition filed for issuance of a writ in the nature of habeas corpus and handed the custody of the detinue to the petitioner, who claimed to have married her.

In view of the above discussion, this Court is of the view that there is no merit in the present petition, which is hereby dismissed.

Needless to mention, any observation made 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 anything stated hereinabove.

(SUVIR SEHGAL)
JUDGE

30.09.2022
Kamal

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