



NEUTRAL CITATION NO: 2022/DHC/004114

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CRIMINAL REVISION PETITION NO.429/2019 AND
CRL.M.A. 7653/2019 (FOR STAY)**

Date of Decision: 19.09.2022

IN THE MATTER OF:YASHWINDER MALIK
S/O SH. BALBIR SINGH
R/O VILLAGE- KURAD,
TEHSIL – SAFIDON,
DISTT. JIND, HARYANA

..... Petitioner

Through: Mr. Jaideep Malik, Advocate.

Versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Naresh Kumar Chahar, APP
for the State.
Mr Anuj Kapoor, Advocate for the
Complainant.
Mr. Shekhar Raj Sharma, Dy.A.G.
alongwith Mr. Paras Dutta,
Advocate.**CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G M E N T****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. This revision is directed against the judgment dated 27.10.2018 passed by the learned Additional Sessions Judge (in short 'ASJ') (North-West), Rohini Courts, Delhi and the order dated 19.01.2019 passed by the ASJ (FTC), Rohini Courts, Delhi, whereby, the learned ASJ allowed the application under Section 216 of the Code of Criminal Procedure,



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1973 (in short 'Cr.P.C.') filed by the victim and directed for framing of charge for the offences punishable under Section 376(1)/511 of IPC against the petitioner.

2. The facts of the case in short are that on 19.11.2009, an incident occurred at Panipat, Haryana at Gian College, where the victim was working as an employee since 27.05.2007. The victim was taken to Prem Hospital and thereafter, she was shifted to PGIMS Rohtak. Later on, the victim was shifted to Apollo Hospital, Delhi. On 20.11.2009, her statement was recorded by the police where she did not disclose the name of any suspect except the fact that one boy came and threw Acid on her.

3. On 20.11.2009, the police registered FIR No.1178/2009 at Police Station Panipat City for offences punishable under Section 326/308/120-B/201 of the IPC. The victim remained admitted during 20.11.2009 to 29.11.2009 at Apollo Hospital. On 01.01.2010, the victim got recorded her statement wherein she made certain allegations against one Bala W/o Yashwinder Malik (present petitioner). On 28.01.2010, the police added Section 308 of the IPC. On 27.03.2010, police closed the file with an untraced report. On 07.10.2013, the victim submitted an application to the District Legal Service Authority (in short, 'DLSA') at Panipat for providing her appropriate compensation for Acid attack as per Haryana Government Policy. The officials of DLSA interacted with the victim and she was told that in absence of there being any allegation against any person, she would not be entitled to any compensation. It appears that on 24.10.2013, a fresh statement of the victim was got recorded before



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DLSA where she made specific allegations against the present petitioner and other accused persons.

4. On the basis of the statement made by the victim on 24.10.2013, police started taking action against the accused. On 05.11.2013, the petitioner was arrested under Section 201 of the IPC. On 06.11.2013, he was granted bail by the CJM court. On 27.11.2013, it appears that the real culprit, who had thrown acid on the victim was declared a juvenile. It appears that on 11.12.2013, another accused Bala was also granted bail by the court of sessions. On 24.12.2013, a chargesheet was filed by the police for the offences punishable under Sections 326/308/120-B/201 of the IPC. On 30.01.2014, another accused Mandeep Mann was also granted bail by the court of Sessions.

5. It is also seen that on 12.03.2014, the Hon'ble Supreme Court stayed the proceedings in a petition filed by the victim, wherein, she prayed for transfer of the trial from the State of Haryana to another State. On 22.08.2014, the Hon'ble Supreme Court transferred the case to Rohini Courts, Delhi and accordingly, on 16.10.2014, the case was marked to learned CMM North-West Rohini, Delhi. On the committal of the matter to the competent court, the learned MM *vide* order dated 01.11.2014 has framed the charges for the offences punishable under Sections 326/201/120-B against the petitioner and for other offences. The petitioner, other accused persons and the complainant filed criminal revisions against the order of framing of charge before this court. The matters were registered as CrI.Rev.P. 472/2016, CrI.Rev.P. 183/2015 and CrI.Rev.P. 591/2015. *Vide* common judgment dated 08.12.2016, this court set aside the order of framing of charge against the petitioner and



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Mandeep @ Maan. The order of discharge of the present petitioner and other accused were challenged by the victim before the Supreme Court in Special Leave to Appeal (Criminal) 4111-4113 of 2017.

6. The Hon'ble Supreme Court *vide* order dated 19.01.2018 had held that under the fact situation of the case, the High Court committed an error while discharging the petitioner and accordingly, the order passed by this court, was set aside. It was found by the Hon'ble Supreme Court that this court exceeded its jurisdiction in virtually appreciating the evidence on record at the stage of framing of charge as if it was evaluating the said evidence after a full-fledged trial. The Hon'ble Supreme Court did not deal with elaborate contentions raised by the respective parties as the same would have caused prejudice to one or the other party and rested the matter at that. The Hon'ble Supreme court on concessions being made by the parties found that the charge for offences under Section 376(2)(f) read with Section 511 was erroneously framed as the said section came into existence only in 2013 by the amendment on 13 of February 2013 and could not be given retrospective effect.

7. After passing of the order by the Hon'ble Supreme Court, the matter was again taken up by the learned Additional Sessions Judge. *Vide* order dated 21.03.2018 he recorded the submission in order sheet made by the victim that charge under Section 376(1) of IPC is still made out against the present petitioner and, therefore, a request was made to proceed against the petitioner for the said offence. The learned ASJ, however, has recorded that the order of the Hon'ble Supreme Court nowhere recorded that any other charges other than the charges already framed against the petitioner are made out, however, the victim



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submitted that she would be moving an appropriate application before the Hon'ble Supreme Court seeking necessary clarification, therefore, the proceedings were adjourned for the next date. The fact would further show that the victim filed an application before the Hon'ble Supreme Court for clarification of the order dated 19.01.2018 which came to be decided by Registrar (J-1), on 25.05.2018, stating therein that the application in question did not disclose any reasonable cause to receive the same for registration and the same was, therefore, lodged. However, it was made clear therein that if the petitioner therein (victim) is aggrieved from the order of framing of charge passed by the trial court, it was open to challenge the same before the appropriate forum. The application was accordingly, lodged under the provisions of Order XV Rule 5 of the Supreme Rule, 2013.

8. The facts further show that an application under Section 216 of the Cr.P.C. for alteration of the charge against the petitioner was filed by the victim on 05.09.2018, which was contested by the petitioner by filing a detailed reply and *vide* impugned order dated 27.10.2018, the learned Additional Sessions Judge allowed the said application directing therein that there is sufficient material on record to allow the application under Section 216 of Cr.P.C, as *prima facie* offences under Section 376(1)/511 of the IPC are made out against the petitioner. The petitioner is, therefore, in the instant revision petition.

9. The learned counsel appearing on behalf of the petitioner submits that the order passed by the learned ASJ is erroneous, inasmuch, as the power under Section 216 of the Cr.P.C. could not have been exercised under the same facts and evidence which was already available with the



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court on the date of passing of the order on charge. According to him, the power under Section 216 of the Cr.P.C. can be exercised by the court at any time before the judgement is pronounced but the same would not mean that the same court can revisit the order on charge without there being any substantial change or addition in the evidence. According to him, the alteration of the charge would mean that the court concerned can always frame the charges for the lesser offence for which the main charges were already in existence or can always be entitled to add the higher offences to which the lesser charges were earlier framed. But in no case, the accused person, who has been discharged from a particular offence can again be subjected to the same charge without there being any fresh evidence. He, therefore, submitted that once the Hon'ble Supreme Court has already settled the matter while observing in its order that other further charges framed against the private respondents by the fast-track court will have to proceed in accordance with law it would mean that the further scope for addition or alteration on the basis of the same material is not available with the court concerned. He, therefore, submitted that the charges which were framed by the trial court would remain to be final except for the offences under Section 376(2)(f) which has been set aside by the High Court and affirmed by the Hon'ble Supreme Court. He further submitted that the trial court while considering the submissions made by the victim *vide its* order dated 21.03.2018 was not *prima facie* convinced to proceed against the petitioner for offences punishable under Section 376(1) of the IPC, however, without any reason, has proceeded against the petitioner *vide* impugned order. According to him, even on a subsequent date i.e., on 27.10.2018, the case of the victim was further weakened on account of



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dismissal of the application by the Registrar (J-1), where the application was not even considered to be listed for clarification before the Hon'ble Court. It is, therefore, submitted that the impugned order is a complete abuse of the process of law and under the same set of facts, the trial court could not pass an order of charge repeatedly.

10. The learned counsel appearing on behalf of the State and respondent No.2 vehemently opposes the prayer made by the learned counsel appearing on behalf of the petitioner. According to them, the impugned order is absolutely in accordance with the law and the same does not call for any interference. They jointly submitted that if the order passed by this court on an earlier round of litigation, is carefully perused with the order passed by the Hon'ble Supreme Court the same would clearly demonstrate that the findings given by this court have been completely set aside by the Hon'ble Supreme Court stating therein that the High Court is not obliged to conduct a mini-trial and should not evaluate the facts and evidence at the stage of framing of charge.

11. The learned counsel appearing on behalf of the State and the victim has taken this court to the statement of the victim which has been reproduced by the learned courts below in the impugned order to demonstrate that the reading of the statement dated 27.04.2016 would clearly demonstrate that the charge for offences punishable under Section 376(1) is clearly made out. According to them, it was only a typographical error which was committed by the concerned court at the time of framing of the charge and instead of mentioning an offence under Section 376(1) an offence under Section 376(2) (f) has been mentioned. The sum and substance of the application remain the same, which clearly



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constitutes an offence under Section 376(1) of IPC. According to them, there is no reason as to why the charge under Section 376(1) read with Section 511 of the IPC should not be framed against the petitioner when there is a categorical statement made by the victim in her statement regarding the ingredients of the offences in question. They, therefore, submitted that the reading of Section 216 of the Cr.P.C. would clearly show that at any stage before the judgement is pronounced, the court concerned is competent to alter or add the charges and in the present case, a well reasoned order has been passed by the court of ASJ. In addition, it is also submitted that if the intention of the Hon'ble Supreme Court is seen, the same clearly demonstrates that the present accused has to be prosecuted for the commission of offense of rape. According to them, this court should not go into the technical term of the order but should consider the nature of the direction in its entirety. They further submitted that although there is no specific mention for which offences the trial court should proceed. The intention of the Hon'ble Supreme Court is clear that the trial for offences under Section 376(1) read with Section 511 of IPC must proceed.

12. I have heard the submissions made on behalf of the parties and perused the record.

13. Section 211 of the Cr.P.C. has been reproduced as under:

“211. Contents of charge.

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific- name, the offence may be described in the charge by that name only.



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(3) *If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.*

(4) *The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.*

(5) *The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.*

(6) *The charge shall be written in the language of the Court.*

(7) *If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed. Illustrations*

(a) *A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.*

(b) *A is charged under section 326 of the Indian Penal Code (45 of 1860), with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code-, and that the general exceptions did not apply to it.*

(c) *A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property- mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property- mark, without reference to the definitions of those crimes contained in the Indian Penal Code (45 of 1860); but the*



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sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.”

14. The Hon’ble Supreme Court in various pronouncements has clearly held that the courts are fully competent to alter or add any charge at any time before judgement is pronounced. There is no dispute with respect to the aforesaid legal position. The consequence of alteration or addition of the charges is also to be taken care of, once the court comes to the conclusion of alteration or addition. Section 216 of the Cr.P.C. no doubt, empowers the court to do complete justice and either to frame lesser charges or to add higher charges from the one which has already been framed.

15. In the instant case, if the order of framing of charge against the present petitioner is perused, the same would demonstrate that *vide* order dated 07.01.2015, the court has framed charges against the petitioner for offences punishable under Section 364A/342/376 (2)(f)/511/506 of the IPC. The order of framing of charge was set aside by this court in a revision preferred by the petitioner. The Hon’ble Supreme Court has set aside the order passed by this court *vide* its order dated 19.01.2018. The Hon’ble Supreme Court in its order has directed that the other charges framed against the private respondents by the fast-track court will have to proceed further in accordance with the law except for charge under Section 376(2)(f) of the IPC. It is to be noted herein that the offences under Section 376(2)(f) of the IPC came into existence only in the year 2013 and, therefore, not only before the Supreme Court but before this



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court a concession was made by the parties that the said offence is not attracted, as the same does not have any retrospective application. A concluding part of the order passed by the Hon'ble Supreme Court is being reproduced as under:

“We may, however, note with approval the fair concession made by learned counsel appearing for the State and the learned counsel for the complainant appearing in the proceedings before the High Court that the charge framed under Section 376(2) (f) IPC read with Section 511 IPC has been erroneously framed by the Fast Track Court for, that Section came into existence only in 2013 by Act 13 of February 2013 and could not be given retrospective effect. The other charges framed against the private respondents by the Fast Track Court will have to proceed further in accordance with law. The appeals stand disposed of in the aforementioned terms.”

16. A perusal of the order would clearly indicate that except for the offence under Section 376(2)(f) of the IPC, the trial court was to proceed against the petitioner and other accused for other charges framed against the accused. This statement is reinforced by the reading of the last three lines of the order passed by the Hon'ble Supreme Court which clearly says that the other charges framed against the private respondents by the fast-track court will have to proceed further in accordance with the law. Now, the other charges which were framed against the present petitioner, were for offences under Section 364A/342/506 of the IPC.

17. The victim made the prayer before the Additional Sessions Judge to proceed against the accused for offences under Section 376(1) of the IPC as can be seen from the proceedings of the order dated 21.03.2018. The learned Additional Sessions Judge has observed that after going through the order passed by the Hon'ble Supreme Court, it was explicitly



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clear that the Hon'ble Supreme Court nowhere directed that any other charge other than the charges already framed against the accused (petitioner) that is charged under Sections 364A, 342 & 506 IPC are made out. Concluding part of the observations made by the learned ASJ in his order dated 21.03.2018 reproduced as under: (paragraphs No.103 to 104)

"I have gone through the above order of the Hon'ble Supreme Court. The said order is explicit, in my respectful view, it nowhere says that any, other charge(s) other than the charge(s) already framed against the accused Yashvinder Malik i.e. charge(s) u/S 364A, 342 & 506 IPC which came into existence in the year 2013 would not be made out. The following observations of the Hon'ble Supreme Court are pertinent:

"The other charges framed against the private respondents by the Fast Track Court will have to proceed further in accordance with law."

To this, the Ld. Counsel for the complainant submits that the complainant would be moving an appropriate application before the Hon'ble Supreme Court seeking necessary clarifications in this regard. He is at liberty to do so, if so advised.

At the request of Ld. Counsel for the complainant that a longer date, somewhere in the middle of the month of May, be given as it will take some time to prepare the S.LP. which request is not opposed by the prosecution or by the Ld. Defence Counsel. Consequently, same is allowed in the interest of justice.

In such circumstances, put up for further proceedings on 16.05.2018."

It is also seen that the victim did move an application before the Hon'ble Supreme Court for clarification of the order, as stated by the applicant before the learned ASJ on 21.03.2018. The said application came to be



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lodged in terms of the order dated 25.05.2018 by the Registrar (J-1). It is not disputed that against the said order, there is no appeal or any other proceedings taken up by the victim. On 27.10.2018, when the learned ASJ was deciding an application under Section 216 of the Cr.P.C., filed by the victim was considered, he has taken note of the statement recorded on 27.04.2016. The statement of the victim dated 27.04.2016 as has been reproduced by the learned Sessions judge states that when she went inside the room to bring the file and when she was searching for the file suddenly, she heard somebody coming from behind and then she turned and noticed that it was accused (petitioner), who held her hand and pushed her on the table. She also stated that thereafter, he tried to kiss her and he also tried to remove her clothes and he had removed his pant. At that time lot of pushing around was going on and she went out of the room. After that, she stated that she would not tolerate all this and would leave the town and go away. What is to be considered by this Court at this stage is whether the statement dated 27.04.2016 would alter the position as was existing on 07.01.2016 on the date when the earlier charges for offences punishable under Section 376(2)(f) were framed. It is to be considered by this court whether the trial court on the basis of this statement can frame the charges for offences punishable under Section 376(1) of the IPC. The fact of the present case as has been disclosed would clearly reveal that the trial court at no point of time had framed charges for the offence punishable under Section 376(1)/511 of the IPC. The charges were framed only with respect to Section 376(2)(f) of the IPC and for other offences as has been stated above. It is first time, the learned trial court on the basis of statement/evidence of victim has added the charges for offence under Section 376(1)/511 of the IPC. The



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earlier round of challenge cannot be said to be final adjudication on the issue whether offence under Section 376(1)/511 of the IPC is made out or not.

18. Under the aforesaid circumstances, the addition of charge under Section 376(1)/511 of the IPC cannot be said to be illegal or improper. In view of the aforesaid, this court does not require to go into the further details of the case except to state that the allegation during the course of the trial has come on record with respect to an offence punishable under Section 376(1)/511 of the IPC and, therefore, the trial court is competent to frame the charges for the said offences and hence, the instant revision does not have any substance, the same is, accordingly, dismissed alongwith pending application.

19. This court has not expressed any opinion on the merits of the case.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 19, 2022

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