

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

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CRM-M-2907-2017 (O&M)

Date of Decision : 16.05.2023

Khushveer Kaur and another

..... Petitioners

Versus

Gurpiar Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Satbir Gill, Advocate
for the petitioners.

Mr. Sanjiv Kumar Aggarwal, Advocate for
Mr. Ojas Bansal, Advocate
for respondent No.1.

Mr. Ashish Bishnoi, DAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition are seeking setting aside of order dated 15.11.2016 whereby Additional Sessions Judge, Sirsa has dismissed revision petition of the petitioners seeking setting aside of order dated 26.02.2015 whereby JMIC, Sirsa has declined prayer of the petitioners to frame charges against respondents under Sections 450 of IPC.

2. The brief facts of the case are that the petitioners lodged an FIR against the private respondents. The police after completing investigation filed *challan* under Sections 323, 324, 452, 326, 376 read with Section 511 of IPC. JMIC, Sirsa vide order dated 02.07.2013 committed the trial to the Court of Sessions as there was allegation of commission of offence punishable under Section 376 read with Section 511 of IPC. The Sessions

Judge after considering material available on record and hearing arguments of both sides vide order dated 17.07.2013 observed that charges need to be framed under Sections 458, 354 of IPC instead of Section 452 and 376 read with Section 511 of IPC. The matter came up for consideration before CJM, Sirsa who vide order dated 23.09.2013 framed charges under Sections 458, 354, 323, 324, 326 of IPC.

3. The petitioners moved an application seeking amendment of charge-sheet. The application seeking amendment of charge-sheet came up for consideration before CJM, Sirsa who vide order dated 26.02.2015 came to a conclusion that the Sessions Judge has directed to frame charges under Sections 458, 354 of IPC instead of Section 452 and 376 read with Section 511 of IPC. The charges have already been framed under Sections 458 and 326 of IPC apart from other Sections of IPC and there is no new evidence for framing of charges under Section 450 of IPC. With these observations JMJC, Sirsa, dismissed the application of the petitioners. The petitioners preferred a revision petition before Sessions Court seeking setting aside of order dated 26.02.2015 passed by JMJC, Sirsa. The matter came up for consideration before the Additional Sessions Judge, Sirsa who vide order dated 15.11.2016 has dismissed revision petition of the petitioners.

4. Learned counsel for the petitioners *inter alia* contends that petitioners were not bound to challenge the order of Sessions Court whereby the matter was remanded to Magistrate to frame charges and Magistrate has framed charges under Section 326 of IPC apart from other different Sections of IPC, thus, Magistrate was bound to frame charges under Section 450 of IPC instead of Section 458 of IPC.

5. Learned counsel for respondent No.1 submits that the

petitioners have not challenged order passed by Sessions Court whereby the matter was remanded with a specific direction to frame charges under Sections 458 and 354 of IPC, thus, the petitioners are precluded to challenge order not framing charge under Sections 450 of IPC.

6. Learned State counsel does not dispute the factual position and concedes that State has not challenged impugned order.

7. I have heard the arguments of learned counsel for the parties and perused the record.

8. The present petition sans merit and deserves to be dismissed on account of more than one following reasons:

i) The Sessions Judge ordered to frame charge under Sections 458 & 354 IPC instead of Sections 452 and 376 read with Section 511 IPC. The petitioners acquiesced the said order and did not raise their grouse before any court/authority. The petitioners at this stage have no right to take somersault.

ii) The trial court in terms of Section 211 Cr.P.C. is supposed to frame charge to disclose the offence which the accused has allegedly committed. The trial Court after framing charge is not powerless. The trial court may, at any stage, before judgment is pronounced, alter or add the charge. Thus, trial Court, in the present case, if at any stage, comes to a conclusion that there is need of amendment or addition of charge, it would certainly amend or add the charge.

iii) The petitioners against the order of trial court filed

revision before Sessions Court and through instant petition under Section 482 Cr.P.C. is seeking quashing of both orders i.e. order passed by trial Court as well as Sessions Court. Scope of revision is limited. There should be some illegality or impropriety in the impugned order to invoke revisionary power. Jurisdiction of High Court and Sessions Court to exercise power of revision is concurrent. The petitioners at the first instance invoked jurisdiction of Sessions Court and by way of instant petition is seeking extra ordinary jurisdiction of this court under Section 482 Cr.P.C. This Court while exercising power under Section 482 of Cr.P.C. against order passed by revisionary Court is supposed to keep in mind that power of revision is a limited jurisdiction. There seems no illegality or impropriety in the impugned order passed by trial court as well Sessions Court, thus, there seems no reason to exercise extra ordinary jurisdiction of this court.

iv) Though arbitrary exercise of power is anathema to rule of law as well equity yet framing of charge after considering contents of FIR, police report and evidence on record is within domain of the court framing charge. The trial court after considering documents and evidence on record has framed charges under different Sections of IPC. The petitioner cannot be permitted to compel the Court to frame charge under Section 450 IPC instead of

458.

- v) As per FIR and police report, the petitioners had alleged commission of offence punishable under Section 376 read with 511 IPC. Sessions Court did not find substance in the allegation of petitioners qua commission of offence punishable under Section 376 read with 511 IPC, accordingly, trial court did not frame charges under Section 376 read with 511 IPC. The petitioners are not agitating issue of non-framing of charge under Section 376 read with 511 IPC, though, she made allegation of attempt to commit rape. This shows her act and conduct.
- vi) The petitioners through Public Prosecutor moved an application before trial Court seeking amendment of charge. The State neither filed revision against order passed by trial Court nor has challenged order passed by Revisionary Court. It means though it is a police case yet State has no grievance against impugned order.

In view of above-stated facts and findings, present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

16.05.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>