

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

CRR No.1749 of 2019 (O&M)

Date of Decision: 15.11.2023

Gurmeet Singh

...Petitioner

Versus

State of Punjab & another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Chanchal K. Singla, Advocate,
for the revisionist-petitioner.

Mr. Virat Rana, AAG, Punjab,
for respondent No.1-State.

Mr. Hitesh Verma, Advocate,
for respondent No.2.

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MEENAKSHI I. MEHTA, J.

Feeling aggrieved by the order passed by learned Additional Sessions Judge, Patiala (for short 'the trial Court') on 17.07.2019 in the criminal case bearing SC No.97 dated 18.04.2018, arisen out of FIR No. 312 dated 03.12.2017 as registered at Police Station City, Rajpura under Sections 363 & 366A IPC, whereby the application (Annexure P-1) moved by the petitioner, the father of the prosecutrix (here-in-after to be referred as 'P'), under Section 216 Cr.P.C for seeking the alteration/amendment in the charge framed against respondent No.2 (here-in-after to be referred as 'the accused'), by adding the offences under Section 376 IPC and Sections 4, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012

(for short 'the Act of 2012') therein, has been dismissed, he (petitioner) has moved the instant revision-petition to lay challenge to the same.

2. Shorn and short of unnecessary details, the facts, unfolded on the perusal of the file and culminating in the filing of the present revision-petition, are that the petitioner got the above-said FIR registered, alleging therein that his daughter ('P') had not returned from the School and despite his and his family members' earnest efforts, she could not be traced out and he came to know that 'P' had been enticed away by the accused. During the course of investigation, 'P' was recovered, while she was in custody of the accused. On completion of the investigation and presentation of Challan, learned trial Court framed the charge against the accused. Thereafter, the petitioner preferred the afore-referred application for seeking amendment/alteration in the charge, which has been dismissed vide the impugned order as already indicated in the opening para of this judgment.

3. I have heard learned counsel for the petitioner as well as learned State counsel and learned counsel for respondent No.2-accused in the instant petition and have also perused the file carefully.

4. Learned counsel for the petitioner has contended that the trial Court has wrongly observed in the impugned order that the above-said application (Annexure P-1) had been moved at a belated stage and was, therefore, not maintainable, whereas the charge can be amended/alterd at any stage of the trial proceedings and he has also contended that at the time of passing the said order, the trial Court has gravely erred in dwelling upon the facts that in her statement as recorded under Section 164 Cr.P.C, 'P'

had remained silent regarding the allegation qua the accused having raped her and that as per the report of the Chemical Examiner, no spermatozoa was found to be present in her vaginal swabs and also in ignoring the facts that while appearing in the witness-box as PW-1, 'P' has specifically deposed that the accused had put his finger in her private part and this act on his part constitutes the offence of 'rape' as defined in Section 375 and punishable under Section 376 IPC and also falls within the definition of the offence of the 'penetrative sexual assault' as contained in Section 3(b) and punishable under Section 4 of the Act of 2012 and that she ('P') has further stated that the accused undressed her and pressed her breast and touched her private part and these acts attract the offences as punishable under Sections 8 and 12 of the Act of 2012 and in these circumstances, it becomes explicit that the impugned order is erroneous and hence, the same deserves to be set aside.

5. Per-contra, learned counsel for respondent No.2-accused has argued that the afore-discussed testimony of 'P' (PW-1), in itself, speaks volumes of the fact that while deposing as PW1, she ('P') has improved her version to aggravate the offences and the trial Court has rightly dismissed application Annexure A-1 and therefore, the present petition be dismissed.

6. The observations, as made by the trial Court to the effect that application Annexure A-1 had been moved after the examination of six material prosecution witnesses and was, thus, not maintainable on account of its having been filed at a belated stage, are blatantly incorrect because Section 216(1) Cr.P.C provides that "*any Court may alter or add to any*

charge at any time before the judgment is pronounced". Even otherwise, Section 216 Cr.P.C, in itself, provides for the safeguards, by prescribing the procedure to be followed in the eventuality of amendment/alteration in the charge, so as to ensure that no prejudice is caused to rights of the accused to defend himself and also to have fair trial in the case.

7. Further, even if 'P' levelled the above-discussed allegations against the accused for the first time, while deposing before the trial Court as PW1 and the report of the Chemical Examiner also reflected the absence of the spermatozoa in her vaginal swab, even then the fact remains that the veracity and genuineness of her testimony and the effect of the contents of the afore-said report on the version of the prosecution, are to be looked into and determined by the trial Court at the relevant stage, after appreciating and evaluating the entire evidence that may be led on the record during the course of the trial and at the stage of amending/altering the charge, the trial Court is not supposed to delve deep into the material and evidence (if any), as may be available on the record, to the extent of testing the same on the touch-stone of the sufficiency and trustworthiness thereof, for the purpose of recording the conviction of the accused and rather, such material and evidence are to be taken into consideration only to ascertain as to whether these suffice to afford a ground to prima-facie presume that the offence, as proposed to be added in the charge by way of its alteration/amendment, has been committed or not. However, it is worth-while to mention here that throughout in the impugned order, the trial Court has neither discussed nor has given any findings on the above-discussed aspects.

8. As a sequel to the fore-going discussion, it follows that the impugned order, passed by learned trial Court on 17.07.2019, is not legally sustainable. Resultantly, the revision-petition in hand is, hereby, allowed to the effect that the impugned order is set aside, with the direction to the trial Court to decide application Annexure A-1 afresh, in accordance with law, after affording the opportunity to the parties/their respective counsel to address the arguments in respect thereof. The parties are directed to appear there on 30.11.2023.

15.11.2023*seema***(MEENAKSHI I. MEHTA)
JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*