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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-2829-2023

Date of decision: 21st December, 2023

Sania

...Petitioner(s)

Versus

State of Hayana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Harsh Mehla, Advocate for the petitioner.
Mr. Ajrun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner challenging order dated 9.11.2023 passed by the court of learned Additional Sessions Judge, Yamuna Nagar in sessions case bearing No. SC/53/2023 titled as 'State vs. Mehboob' arising out of FIR No. 141, dated 06.06.2022, under Sections 376(2) (n) 323, 354-C and 506 of the Indian Penal Code, 1860 (for short 'the 1860 Act') wherein an application filed by her and forwarded by the public prosecutor seeking amendment/alteration in the charges already framed, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this case are that the aforementioned FIR was registered on the basis of written complaint filed by the petitioner alleging that her husband had passed away on 13.06.2019 and thereafter the members of her in-laws family had thrown her out from her matrimonial house and her daughter was kept

by them. She was living alone. The accused-Mehboob had met her in some marriage function about six months back. He had induced her on the pretext of helping her in getting her daughter back to her and further on the pretext of performing marriage with her. On the inducement so given, she had started living with him. He had developed physical relations with her but shortly thereafter started telling her that he was heavily indebted and had also to perform marriage of his sister thereby avoiding performing marriage with her. Subsequently, besides ravishing her repeatedly, he started sending her to different persons and hotels for the purpose of her sexual exploitation.

3. It is further alleged that the petitioner even opened a hotel wherein also different persons were called to sexually exploit her. All this continued for a period of two years. As on 18.11.2020, he performed marriage with some other female and on asking he extended threat to kill her. A case under Section 323, 354-C, 376(2) (n) read with Section 506 of IPC was registered on her complaint. Investigation proceedings were initiated. The accused was arrested. Charges under Sections 323, 354-C, 376 (2) (n) and 506 of IPC have been framed against him vide order dated 23.12.2022 and the accused is presently facing trial before the learned trial Court.

4. It is submitted that after recording her statement, the petitioner had moved an application under Section 216 of Cr.P.C. for framing additional charges under Sections 307, 370 and 354-D of the 1860 Act as well as Sections 5 and 6 of The Immoral Traffic (Prevention) Act, 1956 as on the basis of the allegations levelled by her in the FIR as well and in view of her statement recorded under Section 164 of Cr.P.C., a *prima facie* case

has been made out as against the accused for facing trial under the aforementioned charges as well apart from the charges already framed. It is submitted that the learned trial Court, however, dismissed the said application.

5. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while dismissing the application filed by her, the learned trial Court did not apply its mind and erred in holding that charges could not be altered/added upon the application of the complainant, though the trial court was very much competent to do so. Hence, it is argued that the impugned order is liable to be set aside, the application filed by her deserves to be allowed and further that the accused is liable to be charge-sheeted for commission of offences punishable under the aforementioned sections in addition to the offences for which he is already facing trial.

6. I have heard learned counsel for the petitioner and have gone through the record carefully.

7. On perusal of the record, it is revealed that the FIR has been lodged by the petitioner as against the accused-respondent No.2, on the allegations that he had induced the present petitioner on the pretext of performing marriage with her and had not only repeatedly ravished, assaulted and criminally intimidated her but had also thrown her for the purpose of her sexual exploitation at the hands of other persons and had derived money by so exploiting her. In her statement recorded under Section 164 of Cr.P.C., also she had reiterated the allegations so levelled.

8. Learned trial Court had dismissed the application filed by the

petitioner on the ground that except the improved version of the complainant to alter the charge, no sufficient evidence has come on the case file to prove commission of the offences for which the accused is sought to be charge-sheeted by him. The learned trial Court had also placed reliance upon the observations made by the *Hon'ble Supreme Court* in *P. Kartikalakshmi vs. Shri Ganesh and another (2017) 3 SCC 347*, wherein it was observed that an application preferred by the appellant itself before trial Court for alteration of charge was not maintainable.

9. On giving due deliberations to the contentions as raised by learned counsel for the petitioner and on perusal of the record, I am of the considered opinion that the order as passed by the learned trial Court does not warrant any interference.

10. No doubt under Section 216 of Cr.P.C., ample powers have been given to the Court to alter or add charges and fresh charges can be added or altered even after completion of evidence, arguments and reserving the judgment. In *P. Kartikeykarlakshmi's case (supra)*, it was observed by the Hon'ble Supreme Court that Section 216 of Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. The power so vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 of Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is

clear from the discussion as made above that the power of making alteration or addition in the charge vests in the Court itself and no party either complainant or accused or for that matter prosecution has any vested right to seek any addition or alteration of charge because it is not so provided under Section 216 of Cr.P.C.

11. Learned trial Court while passing the impugned order observed that the investigating agency after conducting investigation had not booked the accused for commission of offences punishable under Sections 323, 354-C, 376(2) (n) read with Section 506 of the 1860 Act. The present petitioner had not filed any complaint against the police that the investigation had not been conducted properly and had dismissed the application while relying upon *P. Kartikalakshmi's case (supra)*. On the basis of the material placed on record, as per the opinion of trial Court, no case for addition in charges had been made out. Since the present petitioner had no vested right to seek addition or alteration of charges as framed against the accused and the learned trial Court may change or alter the same at an appropriate stage, if it feels so and as the statement of the petitioner as recorded before the learned trial Court was mere reiteration of the allegations in the FIR which were already thoroughly investigated and were not considered to be sufficient for implicating the accused for commission of offences qua which additional charges have been sought to be framed by the petitioner, therefore, I see no reason to interfere with the impugned order. Accordingly, the same is dismissed.

[MANISHA BATRA]
JUDGE

21st December, 2023

Parveen Sharma

1. Whether speaking/ reasoned
2. Whether reportable

: Yes / No
: Yes / No