

243 IN THE HIGH COURT OF PUNJAB AND HARYANA
 AT CHANDIGARH

CRR-345-2020
Date of decision: 13.02.2024

DILBAGH SINGH @ BAGGA SINGH

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Saransh Sabharwal, Advocate
for the petitioner.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

Mr. Sanjeev K. Sharma, Advocate for
Mr. Shakti Mehta, Advocate for respondent No.3.

HARPREET SINGH BRAR J. (ORAL)

1. This revision has been preferred against the order dated 14.01.2020 passed by learned Sessions Judge, Panchkula vide which an application moved by the prosecution under Section 216, Criminal Procedure Code (hereinafter Cr.P.C.) for amendment of charge from Section 304 to Section 302 of the Indian Penal Code (hereinafter the 'IPC'), in the case stemming from FIR, bearing no. 232 dated 15.07.2016 under Sections 307, 304, 279, 120-B of the IPC, registered at police station Pinjore, was allowed.
2. The facts, tersely put, are that on 15.07.2016, complainant Satnam Singh found a dead body lying on Nalagarh Road, in front of the bus stand of village Molewali. The FIR was registered against unknown person(s) on the basis of the statement of the complainant that the deceased was hit by a rashly and negligently driven vehicle. Subsequently, the statements of Nirmal Singh (brother of the deceased) and other witnesses were recorded under Section 161

Cr.P.C. and taking into consideration the postmortem report, the final report under Section 173 of the Cr.P.C. was presented against the petitioner and the co-accused. After the prosecution evidence was closed and the statement of the petitioner was recorded under Section 313 of the Cr.P.C., an application was moved by the prosecution claiming that the occurrence was in fact a case of murder and not of a road accident.

3. Learned counsel for the petitioner inter alia submits that the approach adopted by learned trial Court is perverse, as the impugned order was passed at the fag end of the trial, when the case was fixed at the stage of defence evidence. Moreover, the brother of the deceased has already filed a claim petition under Section 166 of the Motor Vehicles Act before the learned Motor Accidents Claim Tribunal, U.T. Chandigarh with regard to the same incident by setting up the case that the deceased had died in an accident due to rash and negligent driving of the offending truck being driven by the petitioner-Dilbagh Singh. Moreover, the nature of injuries and the initial version, set up by the prosecution, clearly indicate that it is a case of road accident. Even, in the final report submitted by the Investigating Officer, it has been clearly indicated that deceased was lying dead due to the accident injuries on the road and further, the post-mortem report (Annexure P-2) clearly proves that the injuries suffered by the deceased were due to accident.

4. Per contra, learned counsel for respondent No.3 submits that there is no embargo on the trial Court to invoke provisions of Section 216 Cr.P.C. and this power can be exercised at any time during the pendency of the trial and the trial Court has passed the impugned order by considering the factual matrix.

5. Learned State counsel opposes the prayer made by the petitioner on the ground that learned trial Court has passed a well-reasoned order by

considering the case and the right perspective.

6. Having heard learned counsel for the parties and after perusing the record, it transpires that the trial Court has exercised the power under Section 216 Cr.P.C., on the application filed by the prosecution and it is a trite law that alteration or addition of charge may be done if in the opinion of the Court, there was omission in framing of the charges or if upon *prima facie* examination of the material brought on record, it leads the Court to form presumptive opinion with regard to the existence of factual ingredients, making out a case for the alleged offence. The Hon'ble Supreme Court in ***Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh, 2020(1) R.C.R. (Criminal) 787***, has culled out the test to be adopted by the Court, while deciding the issue with regard to addition or alteration of charges and observed that Section 216 Cr.P.C. provides the Court with an exclusive and wide ranging power to change or alter any charge but such alteration can only be done, if there was an omission in the framing of charges or the Court comes to the conclusion that a *prima facie* examination leads the Court to form such presumptive opinion, as to the existence of the factual ingredients constituting the alleged offence and such material brought on record, has direct nexus with the ingredients of the alleged offence and such power has to be exercised judiciously and to ensure that no prejudice is caused to the accused.

7. The reasoned analysis of the record indicates that there is neither fresh material nor foundational factual ingredients to breach the threshold of Section 302 of I.P.C. Moreover, it is a settled law that power under Section 216 Cr.P.C., cannot be invoked at the instance of complainant, accused or the prosecution, the power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision.

8. At two Judge Bench of the Hon'ble Supreme Court in

P.Kartikalakshmi v. Sri Ganesh 2017(3) SCC 347, has held that:

“7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 Cr.P.C. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardized.”

9. In view of the facts and circumstances of the case and the ratio of law laid down in *Dr. Nallapareddy Sridhar Reddy (supra)* and *P. Kartikalakshmi (supra)*, this Court is of the considered opinion that the trial Court has erred in allowing the application seeking amendment of charges. Resultantly, the present petition is allowed and the impugned order dated 14.01.2020, passed by learned Sessions Judge, Panchkula, is set aside.

February 13, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No