

CRM-M-10110-2024 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

136 CRM-M-10110-2024
Date of Decision:02.04.2024

Dr.Jasdip Kaur Petitioner

VS

Manjit Singh & others Respondents

CORAM : HON'BLE MR. JUSTICE ALOK JAIN

Present :- Mr. Ritesh Pandey, Advocate
for the petitioner

Mr.Fateh Singh Dhillon, Advocate for
Mr.Gagneshwar Walia, Advocate
for respondent No.1.

ALOK JAIN, J. :

1. Prayer in the present petition is for quashing of the order dated 13.02.2024 passed by the learned Additional Sessions Judge, Gurdaspur, vide which the revision petition filed by respondents No.1,2 and 4 had been allowed, while setting aside the order dated 28.11.2023 passed by the learned Judicial Magistrate First Class, Gurdaspur, whereby the learned trial Court allowed the application filed by the petitioner under Section 216 Cr.P.C. for alteration of charge from Section 323 IPC to Section 324 IPC, in Criminal Complaint No.32, dated 15.06.2013, under

Sections 452,332, 353, 186, 148 and 149 IPC, registered at Police Station Sadar Gurdaspur.

2. The brief facts of the case narrated by counsel for the petitioner are that while the petitioner was serving as a Medical Officer at CHC, Village Allechak, the accused trespassed in her room and caused injuries. The FIR No.42, dated 09.03.2007, was lodged, wherein the State preferred to file a cancellation report, however, the petitioner protested and the accused were summoned under Section 323 and 34 IPC, vide order dated 15.06.2013.

3. Cutting the long story short, in the last 17 years of this protracted litigation (i.e. from 2007 till 2024), the accused were summoned on 14.08.2013 to face a trial under Section 452, 323, 148 and 149 of the IPC. The said order was challenged by the accused in a revision and the learned Additional Sessions Judge, Gurdaspur, vide order dated 15.09.2015, remanded the matter back for fresh adjudication. The trial Court again vide order dated 14.01.2016, summoned the accused under Section 452, 323, 506,148 and 149 IPC. The accused again preferred a revision before the Id. Additional Sessions Judge and vide order dated 19.05.2016 the order dated was set aside on 14.01.2016 and finally the trial Court vide order dated 19.02.2018, summoned the accused only under Sections 323 and 34 IPC. After most of the evidence being completed, the petitioner moved an application after four years, under Section 216 of Cr.P.C. in the year 2022 for alteration of charge and vide

order dated 28.11.2023, the trial Court allowed the application adding the offence under Section 324 IPC against the accused.

4. The accused again approached the Sessions Court and challenged the order passed under Section 216 of Cr.P.C., which came to be allowed on 13.02.2024, and the charge under Section 324 IPC was removed and aggrieved by the said order dated 13.02.2024, the petitioner, who is the original complainant has approached this Court.

5. Learned counsel for the petitioner has opened his arguments and submitted that the petitioner had levelled categoric allegations that the accused Manjit Singh gave a thick *karha* blow, worn by him on his wrist, which hit the complainant on the left eyebrow near forehead. To substantiate the said injury, the counsel has relied upon the medico legal report, which reported an incised wound. In the light of the above, the counsel has also relied upon the testimony of the complainant, recorded on 27.07.2013, wherein she clearly stated that the accused who was wearing a heavy weight *karha*, gave a fist blow of his hand, which hit her on her left eye and therefore, in the light of all the above, the trial Court legally passed the order dated 28.11.2023 adding the charge of Section 324 IPC.

6. Learned counsel for the petitioner has also argued and relied upon the judgment of the Hon'ble Supreme Court in the case of ***Jaswinder Saini vs. State of Delhi*** to argue that the provisions of Section

216 of Cr.P.C. empowers the Court to alter or add any charge at any point of time. The relevant para reads as under:

“11. A plain reading of the above would show that the Court’s power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the Court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the Court after commencement of the trial. There can in the light of the above be no doubt about the competence of the Court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the Court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the Court. In the case at hand the evidence assembled in the course of the investigation and presented to the trial Court was not found sufficient to call for framing a charge under Section 302 IPC. The trial Court recorded a specific finding to that effect in its order dated 18th March 2009 while framing charges against the appellants before us. The trial Court said:

“The two witnesses Kiran Devi and Smt. Dharam Kaur were at the spot when the deceased fell down

from the second floor and did not notice anyone on the roof of the house. Thus there is no material for framing of charge Under Section 302 IPC against the accused persons. However, there are specific allegations of dowry demand and torture in the statement given by Sh. Ajay Gautam to the SDM and as also in the statements given by his wife Manisha Gautam and his son Vishal Gautam. The deceased had died under unnatural circumstances. Her death took place at her matrimonial home within seven years of her marriage. There is a presumption Under Section 113-B of the Indian Evidence Act of dowry death. Hence on the basis of material on record, I am of the view that prima facie offence Under Section 498A/304B/34 IPC is made out against all the accused persons.”

7. Learned counsel for the petitioner has also relied upon the judgments passed by the Hon’ble Supreme Court of India in case titled as **“Anant Prakash Sinha@Anant Sinha Vs. State of Haryana and Anr.”** and **“State of Maharashtra Vs. Salman Salim Khan and Anr.”** and another judgments passed by the Coordinate Bench of this Court in case titled as **“Roshan Lal Vs. State of Punjab”** and **“Ashwani Kumar Vs. The State of Haryana”**.

8. To summarise the arguments of learned counsel for the petitioner, it has been averred that under the provisions of Section 216 Cr.P.C., it is open to the trial Court to alter the charge at any stage of trial, depending on the material that is brought before it in the form of evidence.

9. Heard learned counsel for the petitioner at length and have gone through the impugned order.

10. Although, it is the settled preposition of law that there is no limitation and the powers of the trial Court are unfettered to alter the charge at any stage, however, the same has to be done in the light of the cogent evidence and the fact that the said evidence is enough to fulfil the ingredients of the imposition of any other charge. In the present case, it is the admitted position of the petitioner that the accused gave a fist blow by his right hand and the *karha* which he was wearing hit her on the left eye, however, by no stretch of imagination can be ruled that the *karha* which the accused was wearing could be treated as a weapon of offence for imposing the provisions of Section 324 IPC.

11. Another aspect of the matter is that the petitioner has completed her entire evidence after the charges were finally framed on 28.11.2023, however, when this date is seen in the light of the fact that every effective order passed by the trial Court, has been duly assailed by either side of the parties, and therefore, it cannot be ruled out, it was at the fag end of the trial when the petitioner moved the application for amendment of charge. The Revisional Court has rightly set aside the order dated 28.11.2023, vide which learned JMIC, Gurdaspur added the Section 324 of IPC by allowing the application under Section 216 Cr.P.C., for the reason that the petitioner is a diligent and aggressive litigant who has been following up the matter emphatically, therefore, it is beyond

comprehension that the petitioner was not aware in the year 2018 when the charge was finally framed and the trial began on 07.03.2018. Nothing new or incriminating was brought forth by the petitioner and it was only at the fag end of the trial that the application for alteration of charge was filed. Be that as it may, the entire evidence has already been recorded and the statements under Section 313 have also been recorded and much less the trial Court is empowered under Section 216 of Cr.P.C. to alter the charge at any time even after the completion of evidence, even after the arguments heard and even when judgment is reserved, and can alter and add any charge.

12. However, the expression ‘at any time’ and before the judgment is pronounced, indicates that the power is very wide and can be exercised in appropriate case in interest of justice but not cause any prejudice to the accused. The Hon’ble Supreme Court of India in ***P Kartikalakshmi v Sri Ganesh and Anr.*** has held that:

“6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power 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 the 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 CrPC 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 an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.

7. We were taken through Section 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 CrPC. 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 CrPC 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 CrPC. If such a course to be adopted by the parties is allowed, then it will be wellnigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised.

13. The Apex Court in a full bench decision in the case of *Harihar Chakravarty Vs. State of West Benga* , has gone to the extent to hold that the direction to alter the charge so as to include an offence for which the appellant was not originally charged, could only be done if the trial Court itself had taken action under Section 227 Cr.P.C. before it pronounced judgement. It could only have done so if there were materials before it either in the complaint or in the evidence to justify such action.

14. Considering the above factual matrix that there was no additional evidence or cogent proof before the trial Court which could form the basis of alteration of charge and more so, the trial Court also did not exercise power under Section 227 of Cr.P.C. and in the light of discussion, I do not find any infirmity in the order dated 13.02.2024 as it is no one's case that the *karha* which was worn by the accused in his wrist was a **weapon** of offence to cause grievous injury although it is not denied that an injury was caused due to the said ornament which the accused was wearing, and therefore the charge could not be altered.

15. Accordingly, the present petition stands dismissed.

(ALOK JAIN)
JUDGE

April 02, 2024
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Whether speaking/reasoned : Yes
Whether Reportable : Yes