

2024:PHHC:062699



IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRR No. 383 of 2024 (O&M)
Date of decision: 06.05.2024

Vishnu @ Bishan ...Petitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Rajesh Lamba, Advocate
for the petitioner.

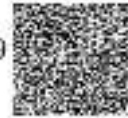
Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner challenging order dated 10.01.2024, passed by the Special Court/Additional Sessions Judge (FTC), POCSO, Palwal in Sessions Case No. 172 of 2022, titled as *State vs. Vishnu @ Bishan*, arising out of FIR No. 33 dated 10.02.2020, registered under Section 346 of IPC (Sections 363, 366-A, 376, 370, 511, 506 of IPC and Section 4 of the POCSO Act, 2012 were added later on) at Police Station Hathin, District Palwal, whereby an application filed by the petitioner under Section 216 of Cr.P.C. had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was initially registered under Section 346 of IPC on the basis of a written complaint filed by the complainant 'B' (*name withheld*) alleging therein that the victim 'H' (*name withheld*), who was his minor daughter, had gone missing from her house on

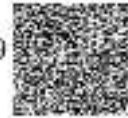
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the previous night. He raised suspicion that she had been kidnapped by someone. The victim was subsequently recovered. Her statements were recorded before the police as well as under Section 164 of Cr.P.C., on the basis of which, offences under Sections 363, 366-A, 376 read with 511 and 506 of the IPC and Section 4 of the POCSO Act were added. The petitioner was arrested and he, along with co-accused, is facing trial for commission of aforementioned offences. He had moved an application under Section 216 of Cr.P.C. before the trial Court making prayer for alteration of charge as framed under Section 4 of the POCSO Act on the ground that the age of the victim was wrongly recorded as 10.08.2004 and in fact as per her birth certificate, her date of birth was 20.11.2001 and even in her Aadhar Card, the same was mentioned as 01.01.2001, thereby proving that she was major on the date of occurrence. The trial Court rejected the prayer of the petitioner by passing the impugned order dated 10.01.2024 by observing that for the purpose of determination of the age of the victim, it was required to rely upon matriculation certificate, date of birth certificate from the school first attended or birth certificate issued by the Corporation or Municipal authority in descending priority and since the certificate issued by the school first attended showed her date of birth as 10.08.2004, therefore, it was the same certificate which would be taken into consideration.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law and is liable to be set aside as three records showing different dates of birth of the victim are available. The entry in the birth certificate as recorded before the Municipal Corporation is more authentic, whereas the entry made in the school record

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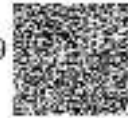
might be having evidentiary value but its probative value has not been established. Therefore, it was incumbent upon the trial Court to consider that question in detail and thereafter to decide the application filed by the petitioner. With these broad submissions, it is urged that the present petition deserves to be allowed.

4. Learned State counsel, who has advance notice of the petition, on the other hand, has argued that the trial Court had rightly dismissed the application as filed by the petitioner as the same was not even maintainable in view of the settled proposition of law that it was only the trial Court which could make any addition or alteration in charge and any application moved either by the accused or by the complainant could not be entertained. To fortify his argument, learned State counsel has placed reliance upon a judgment rendered by this Court in **CRR No. 2829 of 2023**, titled as **Sania vs. State of Haryana and another**, decided on 21.12.2023. It is further argued that even otherwise, the petitioner was having sufficient opportunity to lead the evidence to prove the age of the victim either by way of her cross examination or by way of producing evidence in his defence. Therefore, it is urged that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also perused the material placed on record.

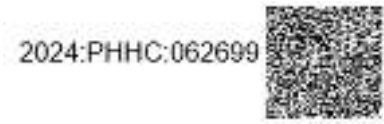
6. No doubt under Section 216 of Cr.P.C., ample powers have been given to the Court to alter or add charges and fresh charges can be added or altered even after completion of evidence, arguments and reserving the judgment. In **P. Kartikalakshmi vs. Shri Ganesh and another (2017) 3 SCC 347**, it was observed by the Hon'ble Supreme Court that Section 216 of

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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. Though, the trial Court is not shown to have gone into this question and dismissed the application as filed by the petitioner on the ground that it was the school certificate, which was required to be taken into consideration, however, keeping in view the fact that the petitioner had no vested right to seek addition/alteration in charge as framed against him and the power lies with the trial Court to change or alter the same at appropriate stage, if it feels so, I see no reason to go into the merits of the plea as taken by the petitioner with regard to age of the victim at this stage, because it is still for the trial Court to decide that question at the appropriate stage.

7. In view of the discussion as made above, it is held that the petition is not maintainable. Accordingly, the same is dismissed. However, it is clarified that the petitioner shall nonetheless be having full opportunity to



produce evidence and to take plea regarding age of the victim either at the stage of defence evidence or even while cross examining the witnesses of the prosecution and will be at liberty to summon the record pertaining to date of birth of the victim at the appropriate stage and this order will not stand as a bar to the remedy so available to the petitioner.

06.05.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

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