

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M-16459-2024(O&M)

Date of order: 05.04.2024

Ravinder Singh

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Bhupinder Banga, Advocate
for the petitioner.

Mr.Kunwarbir Singh, AAG Punjab.

Nidhi Gupta, J.

CRM-14591-2024

This is an application under Section 482 Cr.P.C. for exemption from filing certified copies of Annexures P1 to P9 and exemption from placing on record the more legible copies of photocopies of vernaculars Annexures P1, P2 and P8, appended to the petition.

After going through the contents of the application, which is supported by affidavit of the petitioner, the same is allowed subject to all just exceptions.

MAIN CASE

Prayer in the present petition is for quashing of impugned order dated 20.03.2024 (Annexure P9) passed by the Id. Sessions Judge, Hoshiarpur, whereby the revision petition filed by the petitioner against order dated 03.05.2023 (Annexure P6) passed by learned Judicial

Magistrate, 1st Class, Hoshiarpur, allowing the application for amendment and framing of additional charge under Section 354-B IPC and order dated 6.7.2023 (Annexure P-8) passed by the Id. JMIC, Hoshiarpur, framing charges against the petitioner under Sections 341, 323, 354, 354-B and 506 IPC, has been dismissed, in case FIR No. 0100 dated 3.10.2018 registered under Sections 323, 354, 341, 506, 294 IPC at Police Station Hariana, District Hoshiarpur.

2. Learned counsel for the petitioner inter alia submits that present FIR is a gross abuse of the process of law as the petitioner has been falsely implicated in this case due to the political rivalry of the respondent no.2/complainant and her family members with the petitioner. It is contented that it is for this reason with a view to harass and pressurize the petitioner, that a false criminal case bearing F.I.R. No. 0100 dated 3.10.2018 (Annexure P-1) under Section 323, 354, 341, 506, 294 I.P.C. at Police Station Hariana, District Hoshiarpur has been registered by the complainant.

3. It is submitted that upon registration of the FIR, an inquiry was conducted in the matter by the Superintendent of Police, Hoshiarpur under the guidance of SSP, Hoshiarpur in which inquiry report dated 20.03.2019 (Annexure P2) was submitted. In the said report, it was recommended that offences under Sections 354 and 506 IPC be deleted as offences under the said Sections were not proved. The police, after completion of investigation, also presented challan under Sections 341, 294 and 323 IPC. Then, the case was put up before the learned JMIC, Hoshiarpur for framing of charges. However, vide order dated 13.05.2019

(Annexure P3) the Id. JMIC, Hoshiarpur charged the petitioner under Sections 323, 341, 354 and 506 IPC.

4. However, thereafter, after the complainant had recorded her statement before the police as well as before the learned Magistrate under Section 164 Cr.P.C., and had been partly examined in chief, she filed an application dated 21.12.2021 (Annexure P4) praying for amendment and framing of additional charge under Section 354-B IPC. The petitioner duly filed his reply dated 06.05.2022 (Annexure P5) to the said application. However, vide the order dated 03.05.2023 (Annexure P6), learned JMIC allowed the application of the complainant and vide order dated 06.07.2023 (Annexure P8) charges were framed against the petitioner under Sections 341, 323, 354, 506 and 354-B IPC.

5. The petitioner challenged the above said order dated 06.07.2023 before this Court vide CRM-M-35392-2023, which was dismissed as withdrawn by a Co-ordinate Bench of this Court vide order dated 24.08.2023 with liberty to the petitioner to avail alternative remedy as may be available in accordance with law.

6. The petitioner then challenged the said orders dated 03.05.2023 and 06.07.2023 before the learned Sessions Judge, Hoshiarpur, by filing a revision petition. However, the same has been dismissed vide impugned order dated 20.03.2024 (Annexure P9). Hence, present petition.

7. Learned counsel for the petitioner submits that after conducting thorough enquiry and investigation into the matter, challan was presented under Sections 341, 323 and 294 IPC. However, without

application of mind, the learned trial Court added offence under Section 354-B IPC. It is submitted that in the FIR, as also in the statement made by the complainant under section 164 CRPC, the same set of allegations have been made against the petitioner. It is submitted that on the same set of allegations, additional charge cannot be framed.

8. It is further contended that the case was at the stage of prosecution evidence and even the complainant had been partly examined, and only her cross-examination was to be conducted when the complainant filed the present application (Annexure P-4). It is argued that amendment of charges is not permitted on an application filed by the complainant. As such, provision of Section 216 Cr.P.C. has not been complied with.

9 In support, learned counsel for the petitioner relies upon judgment of Hon'ble Supreme Court in **"P. Kartikalakshmi Vs. Sri Ganesh & Another"** Law Finder Doc ID # 846132, of Allahabad High Court in **"Arvind Yadav Vs. State of UP & Another"** decided on 22.05.2023 Neutral Citation No. 2023:AHC:114140 Law Finder Doc ID # 2384473; and of this Court in **"Amrinder Pal Singh Vs. State of Punjab & Another"** CRM-M-19269-2020 decided on 14.12.2022 Law Finder Doc ID # 2087348.

10. No other argument is made on behalf of the petitioner.

11. I have heard learned counsel for the petitioner and perused the case file in detail.

12. Perusal of record of the case shows that the petitioner is a married man. As per the allegations made by the complainant, the petitioner used to harass the complainant to forcibly make physical

relations with him. It has been alleged in the FIR (Annexure P1) that the petitioner did not desist from his misdeeds even after Panchayat was convened and husband of the complainant was informed. Accordingly, in November, 2017, the complainant gave an application to the SSP concerned. Thereafter, the petitioner accepted his mistake in the presence of Panchayat in the Police Station and had promised not to make such mistakes in future. However, even thereafter, the petitioner continued to click photographs of the complainant from time to time and threatened the complainant by calling her from various different phone numbers by saying that he would post her photographs on the internet and cause insult to her.

13. It has further been alleged in the FIR that on 22.09.2018, when the complainant and her husband were returning from Haveli, then the petitioner encircled both of them, grappled and threatened to kill them. When the complainant and her husband raised hue and cry, the petitioner ran away on his motorcycle. In this respect, the complainant filed another application dated 25.9.2018 before the SSP.

14. It is further alleged that on 03.10.2018 at about 6 am, when the complainant was going to the Haveli for milking buffaloes, the petitioner *"came from front at Motor Cycle who stopped his Motorcycle by bringing before me and gave threatening that you are giving applications against me. Now I am not to let you go, today, who forcibly dropped the veil from my head and held my jumper from my chest and gave threatening with an intention to insult me and also committed misdeeds with me, I raised noise, who gave the threatening that if told to anyone then I will kill to whole of your family and will insult you by posting your photos at*

WhatsApp....". This is the sum total of the allegations made in the present FIR.

15. The grievance of the petitioner is that on the basis of the above allegations, additional charge has been framed against him under Section 354-B IPC. Section 354-B IPC is reproduced hereinbelow:-

"354B. Assault or use of criminal force to woman with intent to disrobe. —Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine."

16. The provision of Section 354B IPC is very clear inasmuch as if a man assaults or uses criminal force on any woman or abets such act with the intention of disrobing her, the same constitutes an offence under Section 354-B IPC. In the present case, the clear allegation of the complainant is that: a) the petitioner forcibly removed the veil from the head of the complainant; b) and held her jumper from her chest; c) and also committed misdeeds with her.

17. At the stage of framing of charge, all that is required to be seen is whether a strong suspicion is created that the alleged offence has been committed by the accused. In the case of **"Tarun Jit Tejpal v. State of Goa"** (SC) : Law Finder Doc Id # 1565679, a 3-Judge Bench of the Hon'ble Supreme Court held as follows:-

"...in Sheoraj Singh Ahlawat v. State of U.P. [2013(1) R.C.R.(Criminal) 153 : (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 :

*AIR 2013 Supreme Court 52], in which, after analysing various decisions on the point, this Court endorsed the following view taken in **Onkar Nath Mishra v. State (NCT of Delhi)** [2008(1) R.C.R. (Criminal) 336 : (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (**Sheoraj Singh Ahlawat case** [2013(1) R.C.R.(Criminal) 153 : (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 Supreme Court 52], SCC p. 482, **para 15**)*

*"15. '11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.' (**Onkar Nath case** [2008(1) R.C.R.(Criminal) 336 : (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507], SCC p. 565, para 11)"*

18. Thus, at the stage of framing of charge, the Court is not required to/expected to go deep into the probative value of the material on record. The Court only needs to consider whether there is ground for presuming that the offence has been committed. In the present case the learned JMIC in her order dated 03.05.2023 (Annexure P6) has given clear-cut findings that prima facie case is made out against the petitioner as under:-

"5. The perusal of record shows that the evidence in this case has been recorded and complainant Sarabjit Kaur specifically deposed in her examination in chief that accused forcibly took

of the chuni, torn the jamper (upper shirt) from breast portion and did ashleel harkat i.e. with intention to outrage her modesty. Said stance of Sarabjit Kaur appearing as PW-5 was corroborated by the version of challa, accordingly prima facie case is made out against accused under Section 354-B IPC. As such, this court finds merits in the application moved by applicant Sarabjit Kaur and charge against accused Ravinder Singh under Section 354-B IPC is order to be additionally framed. As such present application stands allowed. Now to come up on 10.5.2023 for framing of additional charge against accused Ravinder Singh."

19. I find no infirmity in the above reasoning of the learned Court below.

20. As regards argument of learned counsel for the petitioner that framing of additional charge on basis of application filed by the complainant under Section 216 Cr.P.C. is not maintainable, the said argument is liable to be rejected as first and foremost, perusal of the said application dated 21.12.2021 (Annexure P-4), shows that the same has not been filed under section 216 CRPC. The application of the complainant is simpliciter '*Application for amendment and framing of charge with the additional charge u/s 354 – B IPC*'.

21. Secondly, the said argument of the petitioner is also misplaced on the ground that in this respect, a very wide amplitude of powers has been conferred upon the Court by way of Section 216 CRPC, which is reproduced hereinbelow for ready reference:-

"216. Court may alter charge.-(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court, to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

22. A bare reading of sub-section (1) of the above provision shows that the Court has the power to alter or add to any charge, at any time, before pronouncement of judgment. Thus, Sub-section (1) enables the alteration or addition of a charge based on materials brought on record during the course of trial.

23. In a similar situation, in **“Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh” (SC) : Law Finder Doc Id # 1668282** decided on 21.1.2020, in which case during course of trial an application was filed by the Public Prosecutor under section 216 CRPC seeking

amendment of charge, the Hon'ble Supreme Court considered the earlier judgment rendered in case of **P. Kartikalakshmi (supra)** (relied upon herein by counsel for the petitioner), and while relying upon various precedents, held as follows: –

“20. ... The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. ...”

24. In holding as above, the Hon'ble Supreme Court considered and relied upon numerous precedents including **“Anant Prakash Sinha @ Anant Sinha v. State of Haryana”, (2016) 6 SCC 105**; and **“CBI v. Karimullah Osan Khan”, 2014(2) RCR (Criminal) 123 : (2014) 11 SCC 538**. In both the said cases too, charges were altered upon an application to this effect having been filed.

25. In the above referred judgment in **Dr. Nallapareddy (supra)**, the Hon'ble Supreme Court also noticed the following precedent as below:

*“19. In **Jasvinder Saini v. State (Govt of NCT of Delhi), 2013(4) RCR (Criminal) 316 : (2013) 7 SCC 256**, this Court dealt*

with the question whether the Trial Court was justified in adding a charge under Section 302 of the IPC against the accused persons who were charged under Section 304B of the IPC. Justice T S Thakur (as he then was) speaking for the Court, held thus:

"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."

(Emphasis mine)

26. In view of the above, the petitioner can derive no benefit from the relied-upon judgment in the case of **P. Kartikalakshmi (supra)**.

27. In the case of **"Ananda vs State of Karnataka & Anr."** **Criminal Petition No. 1829 of 2022 law Finder Doc ID # 1998553**, decided on 8.6.2022 by the High Court of Karnataka, charges were altered in an application filed by the prosecution u/s 216 Cr.P.C.

28. The Calcutta High Court in **"Satrajit Roy Vs. State of West Bengal & Another"** law Finder DOC id # 1501052, held as under:-

“A. Criminal Procedure Code, 1973 Section 216 Indian Penal Code, 1860 Sections 306, 302 and 376 Alteration of charges - Trial Court framed charges under Section 306 I.P.C. - On subsequent date charge was altered to Sections 302 and 376 I.P.C. - Error or omission in framing charge was brought to notice of trial court by complainant and accordingly charge was altered upon perusal of material which was overlooked – Order does not suffer from any irregularity.”

29. The judgment relied upon by the petitioner, rendered by a Co-ordinate Bench of this Court in **Amrinder Pal Singh (supra)** is distinguishable as in the said case, initially FIR was registered under Sections 420, 467, 468 and 471 IPC and after alteration of charge, the prosecution side had made out a whole different story. It was in that circumstance that alteration of charge was not permitted. In the present case, that is not so. The complainant has reiterated the version of the FIR in her statement under Section 164 Cr.P.C. as also in her evidence as PW5. In this regard, the complainant had also filed two applications before the concerned SSP in November, 2017 and then on 25.09.2018, in which same allegations have been reiterated. Thus, the aforesaid judgments relied upon by the learned counsel for the petitioner are distinguishable in facts and law.

30. Therefore, the crux of the above discussion is that at the time of framing of charge all that has to be determined by the court is whether a prima facie case is made out against the accused on the basis of the material on record. In the present case, allegations against the petitioner disclose ingredients of offence under section 354–B IPC.

Accordingly, I find no infirmity in the impugned orders. Present petition, stands **dismissed**.

31. Pending application(s) if any also stand(s) disposed of.
32. Needless to say, nothing stated here in above shall be construed to be an expression of opinion on the merits of the matter.

05.04.2024

Sunena

Whether speaking/reasoned

Whether reportable

(Nidhi Gupta)

Judge

Yes/No

Yes/No