



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-25500 of 2024 (O&M)

Date of decision : 20.05.2024

Naresh Kumar and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Rahul Deswal, Advocate
for the petitioner.

Mr. Gaurav Bansal, DAG, Haryana.

Mr. Manoj K. Taya, Advocate
for respondent No.2.

PANKAJ JAIN, J. (ORAL)

Present petition has been filed under Section 482 Cr.P.C. assailing the order dated 16th of December, 2023 (Annexure P-19) whereby charge has been altered and the petitioners have been charged for offence punishable under Section 307 IPC as well. Further challenge is to the order dated 4th of April, 2024 whereby revisional Court upheld the order passed by the Trial Court.

2. Counsel for the petitioners while assailing the impugned order has raised solitary contention that power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as enabling provision and no party neither complaint nor accused or for that matter prosecution has any



vested right to seek any addition or alteration of charge. Reliance has been placed upon '**P. Kartikalakshmi vs. Sri Ganesh and another**', (2017) 3 SCC 347.

3. I have heard counsel for the petitioners and have carefully gone through records of the case.

4. There can't be any dispute or conflict with the proposition that neither the prosecution nor the victim or accused has any vested right seeking alteration of charge. But it cannot be laid as an absolute proposition that an application seeking alteration of charge cannot be entertained. Section 216 is an enabling provision vesting the Court with power to alter/amend the charge where necessity arises, to meet the contingency that comes to its notice or is brought to the notice of the Court. Reference can be made to the observations made by Apex Court in **P. Kartikalakshmi's** case (supra) wherein it has been observed as under :

“6. ...Section 216 CrPC, 1973 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, 1973 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.”

5. Various precedents including *P. Kartikalakshmi's* case were considered by Apex Court in the case of ‘**Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh and others**’, (2020) 12 SCC 467 to hold as under :

“20. From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. 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. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the



accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused."

6. The petitioners are facing criminal trial in FIR No.367 dated 9th of December, 2015 registered for the offences punishable under Sections 323, 324, 506, 34 IPC, at Police Station Nissing, District Karnal. The allegation against the petitioners are of having caused injuries to Mohan Singh son of Dhari Singh. The victim in all suffered ten injuries. During the course of trial an application was moved claiming that from the injuries suffered by the victim offence punishable under Section 307 IPC was made out and thus the petitioners need to be charged for offence punishable under Section 307 IPC as well. The application moved by the prosecution was dismissed by the Trial Court. In revision, the same was upheld. The matter reached before this Court in CRM-M No.27905 of 2023. This Court held that keeping in view the injuries suffered by the victim which have been caused by sword, the Courts ought to have gone through evidence to infer as to whether there was an intent to kill on part of the accused(s) or not instead of dismissing the application for alteration of charge merely relying upon medical evidence. The orders were quashed and the Trial Court was directed to decide the application afresh.



7. Trial Court thereafter analysed the evidence on record and came to the conclusion that *prima facie* it appears that the offence punishable under Section 307 IPC has been committed by the accused persons. Resultantly, JMIC, Karnal altered the charge and committed the trial to the Court of Sessions Judge vide impugned order dated 16th of December, 2023. The order was assailed by the petitioners in revision. The revisional Court upheld the order passed by the Trial Court holding that in order to deduce the intention of the accused it can be inferred from the evidence on record that sword blows as well as *gandasi* blows were given on the person of the victim including on vital parts and thus Trial Court rightly came to the conclusion that the offence punishable under Section 307 IPC was made out after appraisal of the evidence on record.

8. In view thereof, this Court does not find any reason to interfere in the well reasoned orders passed by the Courts below while exercising jurisdiction under Section 482 of the Procedure Code as the scope of Section 482 Cr.P.C. has been well laid down by the Apex Court in the case of **Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1** holding as under :

“23. This court in a number of cases has laid down the scope and ambit of courts' powers under [section 482](#) Cr.P.C. Every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under [section 482](#) Cr.P.C. can be exercised:



- (i) to give effect to an order under [the Code](#);
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

24. Inherent powers under [section 482](#) Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

9. In view thereof, finding no merit in the present petition the same is ordered to be dismissed.

May 20, 2024
Dpr

(Pankaj Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No