



CRM-M-29524-2024

127

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

CRM-M-29524-2024

Date of decision: 5th August, 2024

Mohd. Ramzan (deceased) through LR

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rohan Mittal, Advocate for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner seeking quashing of order dated 14.09.2022 passed by the Court of Chief Judicial Magistrate, Nuh in case arising out of FIR No. 726 dated 15.10.2013 under Sections 147, 149, 223, 452 and 506 of IPC, 1860 at Police Station Nuh titled as '*State Vs. Salauddin and others*', whereby an application filed by the petitioner for making alteration in the charge and framing charges under Sections 147, 148, 392, 420 and 452 read with Section 120-B of IPC was dismissed as well as the order dated 10.10.2023 passed by the Court of learned Sessions Judge, Nuh in criminal revision bearing No. 113 of 2022 titled as '*Ramzan Vs. State of Haryana*' thereby dismissing the petition filed by the present petitioner and affirming order dated 14.09.2022.

**CRM-M-29524-2024**

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of complaint lodged by the present petitioner alleging therein that his sons namely Aarif and Jiaudin got married with Jule Khan and Sabnur respectively, on 20.02.2005. On 27.12.2012, Jule Khan suffered a miscarriage due to some natural reasons. However, in connivance with her father Salauddin, she got registered a case levelling false allegations against the petitioner and his family members. On 01.01.2013, the accused Salauddin and Yasir came to his house and assaulted his son Aarif. On 04.01.2013, the accused Allauddin, Kutabddin and Nasir came there and again assaulted the son of the petitioner. They also took forcible possession of his house by showing weapons and threw his family members and himself out of his house. He further alleged that the accused persons stayed at his house from 01.01.2013 to 19.01.2013, took away all articles lying in his house as well as his buffalo and then left while extending threat to complainant to face dire consequences.

3. As per the further allegations, on reaching back to his house, the complainant found that gold and silver ornaments, cash amount of Rs. 40,000/-, 35 bags of mustard and wheat crops, one buffalo and other costly articles lying in his house, documents relating to ownership of property and educational qualifications certificates of his son were missing. While alleging that the accused also forged a Nikahnama with the help of Maulvi Ramjan and had been blackmailing and extending threats to him, he prayed for taking action in the matter. During the course of investigation, offences under Sections 392, 420 and 120-B of IPC were

**CRM-M-29524-2024**

added which were subsequently deleted. The accused were arrested. After completion of investigation, challan under Sections 147, 149, 323, 452 and 506 of IPC was presented against the accused persons.

4. On finding a *prima facie* case, the learned trial Magistrate charge sheeted the accused under Sections 323 and 506 read with Section 34 of IPC. They pleaded not guilty to the charges and claimed trial. During the course of trial, the present petitioner-complainant moved an application under Section 240 of Cr.P.C. making prayer for alteration in the charges so framed and for also framing charges under Sections 147, 149, 392, 420, 452 and 120-B of IPC against the respondents No. 2 to 7. The application so filed by the present petitioner had been dismissed vide order dated 22.07.2016. A revision petition filed against the said order had also been dismissed by the Court of learned Additional Sessions Judge, Nuh vide order dated 01.09.2017. The petitioner thereafter approached this Court, by filing a petition bearing **CRM-M-41101-2017 (O&M)** titled as '*Mohammad Ramzan Vs. State of Haryana*' challenging the orders dated 22.04.2016 and 01.09.2017 and the said petition had also been dismissed vide order dated 02.11.2017.

5. As revealed from the record, after recording of statements of material prosecution witnesses, the petitioner again moved an application under Section 216 of Cr.P.C. seeking alteration/addition of charges under Sections 147, 148, 392, 420, 452 and 120-B of IPC. The said application had been dismissed by the Court of learned Chief Judicial Magistrate vide order dated 14.09.2022 and the revision filed against the said order has also been dismissed vide order dated 10.10.2022 that have been assailed



CRM-M-29524-2024

6. It is argued by learned counsel for the petitioner that the impugned orders are not sustainable in the eyes of law as while passing the same, the Court of learned Chief Judicial Magistrate and the revisional Court did not properly appreciate the material placed on record and ignored the fact that from the statements of the witnesses as examined by the prosecution, a clear cut case was made out to show that apart from offences punishable under Sections 323 and 506 of IPC for which the respondents No. 2 to 7 were facing trial, they had also committed offences under the above mentioned Sections. With these broad submissions, it is argued that the impugned orders of the Courts below are liable to be set aside, the petition deserves to be accepted and the application moved by the petitioner for alteration/addition of the charges under the aforementioned sections deserves to be allowed. To fortify his argument, learned counsel for the petitioner has placed reliance upon '**Anant Prakash Sinha Vs. State of Haryana, 2016(1) Law hearlad 630**'.

7. Learned State counsel has not raised any serious objection as to allowing the petition.

8. Due deliberations have been given to the contentions as raised by learned counsel for the petitioner.

9. The petitioner is aggrieved by the fact that the prayer made by him for making alteration in the charges previously framed against the respondents No. 2 to 7 and adding charges under Sections 147, 148, 392, 420, 452 and 120-B of IPC has not been accepted by the trial Court and by the revisional Court. Section 216 of Cr.P.C. authorises the Court to make alteration or addition to charge at any time before the judgment is

**CRM-M-29524-2024**

pronounced. The phrase “add any to the charge” in sub-section 1 of this Section includes addition of a charge. The provision enables the addition or alteration of a charge, based on materials brought on record during the course of trial. Sub Section 3(3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence or the prosecutor in the conduct of the case, the Court may proceed with the trial as if additional or alternative charge is the original charge. Sub-Section 4 of this Section, contemplates a situation, where the addition or alteration of charge which prejudices the accused and empowers the Court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. It is also well settled proposition of law that alteration or change in the charge can be made by the Court at any stage of the trial, if there is defect or something is left out.

10. The question that arises for consideration before this Court is as to whether the petitioner being complainant of the aforementioned FIR had a right to seek any order to be passed under Section 216 of Cr.P.C. before the trial Court as a matter of right for addition or alteration of the charge. In this context, it would be preferable to refer to '**Thakur Ram and others Vs. State of Bihar, AIR 1996 SC 911**', wherein, it was observed that the powers available under Section 216 of Cr.P.C. can be exercised only by the Court on its own and no party has right to seek for passing of any order under the said provision. Further, in '**P.Kartikalakshmi vs. Sri Ganesh (SC), 2017(3) SCC 347**', the Hon'ble Supreme Court had again observed that no party neither de-facto

**CRM-M-29524-2024**

seek any addition or alteration of charge because it is not provided under Section 216 of Cr.P.C. It is observed that if such a course to be adopted by the parties, if allowed then it will be well nigh impossible for the criminal court to conclude its proceedings and concept of speedy trial will get jeopardised. In ***‘Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh (SC), 2020 (1) RCR (Criminal) 787’***, the Hon’ble Supreme Court while dealing with an appeal against an order passed by the High Court, thereby allowing a revision petition filed by the complainant against the order of dismissal of application under Section 216 of Cr.P.C., had dismissed the same by observing that reasons were spelt out by the High Court necessitating the addition of the charge and the view as taken in ***P.Kartikalakshmi’s case (supra)***, had been upheld in that case. In ***Anant Prakash Sinha’s case (supra)***, the Hon’ble Supreme Court had observed that a complainant can maintain an application for adding/altering charges. However, a Division Bench of High Court of Madhya Pradesh in ***‘Vijay Kumar Jain Vs. State of Madhya Pradesh, 2020 CriLJ, 2411*** had observed that view rendered by Supreme Court in ***P.Kartikalakshmi’s case (supra)*** having not been considered in subsequent judgment rendered in ***Anant Prakash Sinha’s case (supra)***, the view so taken was rendered per incuriam of the earlier view and had therefore, observed that the view taken by the Apex Court in ***P.Kartikalakshmi’s case (supra)*** continued to hold the field. Meaning thereby that though the trial Court is at liberty to *suo motu* exercise its jurisdiction, if facts and circumstances of the case justify such invocation, based on the interpretation given by the Apex Court to the scope, sweep



CRM-M-29524-2024

and content of Section 216 of Cr.P.C. in *P.Kartikalakshmi's case (supra)*, and *Dr. Nallapareddy Sridhar Reddy's case (supra)* but the powers under Section 216 of Cr.P.C. cannot be exercised on an application made by any of the rival parties and such power is available to be exercised only *suo motu* by the trial Court.

11. In the instant case, the learned trial Court did not exercise any *suo motu* powers while passing the impugned order and such powers were sought to be invoked on by filing of an application under Section 216 of Cr.P.C. by the petitioner. In view of ratio of law as laid down in the above cited cases, there can be no hesitation in observing that learned trial Court committed no error in not acting upon the application so moved.

12. Even otherwise, on a perusal of statements recorded by the petitioner and other prosecution witnesses before the trial Court (copies of which have been placed on record), it is revealed that these statements are are reiteration of the statements as made by them during the course of investigation. The investigating agency had conducted thorough investigation in the matter and had arrived at a conclusion that no case for commission of offences punishable under Sections 392, 420 and 120-B of IPC had been made out. On going through the statements of PW1-Ziauddin, PW3- Mohd. RAMjan, PW4-Hamida, PW8-Mohd. Aarif and PW9-Wahid, I am of the considered opinion that the same do not make out a case for commission of the aforementioned offences as against the respondents No. 2 to 7 for the following reasons.

13. So far as the offence of **cheating** is concerned, the same is defined under **Section 415** of IPC. The essential ingredients required to

**CRM-M-29524-2024**

inducement of a person by deceiving him; the person so deceived should be induced to deliver any property to any person; or to consent that any person shall retain any property; or the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit, if he were not so deceived. Then **Section 420** deals with the cases of cheating whereby the deceived person is dishonestly induced to deliver any property to any person; to make any alter or destroy; the whole or any part of valuable security; or anything which is signed or sealed and which is capable of being converted into a valuable security. The statements of neither of the witnesses of prosecution, however, show as to what specific act was committed by either of respondents No. 2 to 7, which fell within the definition of the offence of cheating punishable under **Section 420** of IPC.

14. Then with regard to the offence under **Section 392** of IPC, the allegations are that respondents No.2 to 7 had robbed the complainant by carrying away the gold and silver ornaments, luxury items and one buffalo from his house. As per **Section 390** of IPC in all robbery, there is either theft or extortion. Theft is 'robbery' if in order to the committing of theft; or in committing the theft; or in carrying away or attempting to carry away property obtained by theft; the offender, for that end, voluntarily causes or attempts to cause any person, death or hurt or wrongful restraint; or fear of instant death; or of instant hurt; or of instant wrongful restraint. In view of this definition, the offence of robbery by theft is committed, if the offender causes or attempts to cause, hurt, wrongful restraint, or fear of instant death or hurt or wrongful restraint to

**CRM-M-29524-2024**

the victim. None of the witnesses so examined before the prosecution however, are shown to have uttered even a single word to the effect that while taking away the ornaments and articles from the house of the complainant, either of the respondents had voluntarily caused or attempted to cause hurt, wrongful restraint, death, fear of death or of instant hurt or of wrongful restraint to either the complainant or his family members. As such, in the considered opinion of this Court, the investigating agency had rightly deleted the offences under Sections 392 and 420 of IPC and even on the basis of the evidence produced on record, no case for framing charges under the aforementioned Sections had been made out.

15. So far as, the offences under **Sections 147, 149, 452 and 120-B** of IPC are concerned, the learned trial Magistrate had not framed charges under the aforementioned Sections as on 22.07.2016 while framing charges under Sections 323 and 506 of IPC. The revision petition and petition before this Court under Section 482 of Cr.P.C., as filed against the said order of Magistrate have already been dismissed. On a cursory perusal of the statements of PW-1, PW-3, PW-4, PW-8 and PW-9, it is not revealed that the respondents No. 2 to 7 had formed any unlawful assembly within the meaning of Section 141 of IPC, or had used force or violence while being armed with deadly arms, in prosecution of common object of such assembly, thereby committing offence of rioting within the meaning of Section 146 of IPC punishable under Sections 147 and 148 of IPC. Therefore, the learned trial Magistrate as well as revisional Court can not be stated to have erred by not accepting the prayer made by the petitioner to frame charges under Sections 147 and 148 of IPC as well.



CRM-M-29524-2024

16. So far as the offence under **Section 452** of IPC is concerned, though there are allegations that the respondents No. 2 to 7 occupied the house of the complainant and stayed there from 01.01.2013 to 19.01.2013 but it has come on record that the FIR in this case was lodged only on 15.10.2013 i.e. after a gap of about nine months from the date of alleged incident and the allegations that respondents No. 2 to 7 had also entered into a conspiracy, were also raised at that time. The learned trial Magistrate as well as the revisional Court had not accepted the plea of the petitioner to frame charges under Sections 452 and 120-B of IPC as against the respondents No. 2 to 7 even after considering the evidence produced on record. As such, irrespective of the fact that the trial Court was competent to frame charges at any stage of the trial, no illegality can be said to have been committed by the learned trial Court by declining to frame charges under the aforementioned Sections as in view of the reasons as spelt out above, the addition of the charges was not necessitated. Therefore, obviously, the order dated 10.10.2023 also cannot be stated to be suffering from any infirmity. As such, the impugned orders do not warrant any interference. Accordingly, the petition is dismissed. The proceedings before the learned trial Court shall continue.

17. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

5th August, 2024
Parveen Sharma

- | | | |
|-------------------------------|---|----------|
| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |