



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36309-2024
Reserved on: 11.12.2024
Pronounced on: 12.12.2024

Bishwadeep Dutta and others ...Petitioners

Versus

Central Bureau of Investigation ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Alok Mittal, Advocate
Mr. Shubham Thakur, Advocate and
Mr. Ankit Rana, Advocate
for the petitioner.

Mr. Gagandeep Singh Wasu, S.P.P.
for the respondent- CBI.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
RCCHG201420021	09.12.2014	CBI/ACB/CHG	120-B, 420 IPC and 13(2) read with Section 13(1) (d) of PC Act

1. Aggrieved by the dismissal of an application filed by the petitioners under Sections 216/227 CrPC, 1973, by Special Judge, CBI Court, Chandigarh, vide order dated 14.03.2024, the petitioners came up before this Court under Section 528 BNSS, 2023.
2. Based on the allegations of corruption, CBI had registered the above captioned FIR against (1) Sh. R.C. Diwan, (2) Sh. S.R. Aggarwal, (3) Sh. B.K. Bansal, (4) Sh. Bishwadeep Dutta, (5) M/s Selvel Media Services Pvt. Ltd. and other unknown persons. Although three public servants were named in the FIR, the CBI launched prosecution only against one public servant, i.e., (A-1) R.C. Diwan, and kept the other two public servants in column no.12 and did not file a charge sheet against them.
3. Vide order dated 23.11.2021, Special Court, CBI Chandigarh framed charges under Sections 120-B r/w 420 IPC and 13(2) r/w 13(1) (d) of PC Act against A-1 Ramesh Chander Diwan, Bishwadeep Dutta, Jimmy K Subawalla, Mysa Ganesh, M/s Selvel Media Services Pvt. Ltd. and M/s Outdoor Communication Pvt. Ltd.

4. Feeling aggrieved, A-1 Mr. R.C. Diwan, Superintending Engineer, filed a criminal revision petition before this Court, challenging the charges framed against him, which was registered as CRR No. 1388 of 2021. Vide judgment dated 15.01.2024, a co-ordinate Bench of this Court had partly allowed the said petition and discharged the accused R.C. Diwan of all the offenses framed under IPC because no sanction was obtained as was mandated under Section 197 CrPC; however, the Court did not disturb the charges framed for offenses punishable under Prevention of Corruption Act.

5. A-1 R C Diwan filed an application under Section 216 CrPC, and the petitioners also filed an application under Section 216 read with 227 CrPC seeking to alter the charges. In compliance with the order dated 15.01.2024, passed by this Court, the Trial Court, i.e., Special Judge, CBI Court, Chandigarh vide order dated 19.03.2024, altered the charges, and accordingly, all the offenses punishable under IPC were dropped against accused No.1 R.C. Diwan.

6. Petitioners' grievance is that they have been charged with conspiracy with the officials of Municipal Corporation, Chandigarh; however, only one such official, R.C. Diwan, was initially charge-sheeted and although earlier the charges were framed under Section 120-B IPC and other IPC offenses but due to want of sanction, the High Court set aside the charges framed under IPC. After the said order, charges were altered, and all the offenses under IPC were deleted against the main accused, R.C. Diwan, including Criminal conspiracy punishable under Section 120-B IPC. In the altered charge sheet, it has been alleged that the non-official accused conspired with the officials of Municipal Corporation, Chandigarh, however with whom they conspired is silent because no charges for entering into a criminal conspiracy have not been framed against the officials of Municipal Corporation under Section 120-B IPC.

7. Petitioners' foundational submission is that criminal conspiracy has to be made with an official of the Municipal Corporation and not the posts of the Municipal Corporation. Once the charges of criminal conspiracy do not exist against the Municipal Corporation officials, in the absence of officials of the Municipal Corporation, no charges can be framed against the petitioners, who are not public servants. A criminal conspiracy without entering into any conspiracy with the public servants is meaningless because, in the absence of charges for the criminal conspiracy against the public servants, the private accused could not have conspired with anybody.

8. In a nutshell, the petitioners' grievance is that by altering the charges and substituting the officials of Municipal Corporation while deleting the charges against R.C. Diwan, serious prejudice has been caused to them, which is violative of Section 239(3) of BNSS [216(3) CrPC]. Petitioners also sought alteration of charges on the grounds that applicants had formed a cartel, which is not a criminal act; advertisement fee/tax was mentioned, but it was not clear whether the accused had paid advertisement

tax or fee.

9. The CBI filed a detailed reply to the said application, and in para no.3, it is explicitly mentioned that the application was filed by the accused persons with an ulterior motive to delay the trial proceedings.

10. Vide the impugned order dated 15.04.2024, Special Judge, CBI Chandigarh dismissed the petitioner's application filed by the petitioners. While dismissing the application, the trial Court observed that charges were altered against R.C. Diwan to comply with the order passed by the High Court, and since the High Court passed no order regarding the present petitioners, there was no need to alter the charges by amending the same qua them.

11. I have heard counsel for the parties and have gone through the record and its analysis would lead to the following outcome.

12. The trial Court had framed charges against six accused, including the petitioners, vide order dated 23.11.2021. Challenging the charges, one accused, R.C. Diwan, approached this Court by filing a criminal revision petition.

13. Vide order dated 29.01.2024, the said petition was partly allowed, and a Coordinate Bench of this Court discharged the accused R.C. Diwan for the offenses punishable under IPC because no sanction was obtained to prosecute him. However, since the accused, R.C. Diwan, had retired, no sanction was required under section 19 of the PC Act to prosecute under section 13.

14. To comply with the directions of this Court, vide order dated 14.03.2024, the trial Court had no choice but to alter the charges by deleting the charges under IPC offenses against R.C. Diwan.

15. Since the order framing of charges is a final order, a time limitation is attached to the same, within which the said order could have been challenged. Petitioners took their call not to challenge such charges, whereas the co-accused A-1 had challenged it. Thus, petitioners cannot now challenge the charges framed on 23.11.2021 in the disguise of the order passed in favor of the main accused, R.C. Diwan, to whom only limited relief was given that too for want of sanction being a public servant. Thus, it is clear that the petitioners were not at all aggrieved by the initial framing charges, and they never challenged them. If the co-accused R.C. Diwan had not challenged the charges, or his petition was dismissed, the petitioner had no pains.

16. Petitioners filed an application under Section 216 CrPC on the ground of alteration of charges in favor of R.C. Diwan. Section 216 CrPC (239 BNSS) explicitly empowers any Court to alter or add any charge before the pronouncement of judgment. In

the present case, charges were altered before the pronouncement of judgment and based on the order passed by this Court. Since the alleged acts were done in the discharge of official functions, the Court could not have taken cognizance without a prior sanction under S. 197 CrPC, 1973.

17. The conclusion of the discussion is that petitioners cannot take advantage of the order of alteration passed in favor of the co-accused because they did not challenge the charges framed against them by filing a similar petition.

18. While altering the charges, what has to be significant is Section 216 (3) & (4) [Section 239 (3) & (4) BNSS]. As per sub-clause (3), due to alteration or addition of any charge, in the opinion of the Court, if any prejudice has been caused to the accused in his defence or to the prosecutor in the conduct of the case, then the Court has to proceed from the stage of evidence where it was left with legal assumption as if charges had been altered from the beginning. However, as per sub-clause (4), if, in the opinion of the Court, prejudice is caused to the accused due to alteration or addition of charge, then either the Court has to start a new trial or adjourn the trial for such period as may be necessary.

19. In the present case, what has to be analyzed is whether by altering the charges, any prejudice has been caused to the petitioners which would lead to denovo trial or not.

20. Perusal of the nature of allegations as mentioned in the police report, order framing charges, and the charge sheet clearly point out that even if the offenses under IPC are deleted against R.C. Diwan, then it would certainly not cause any prejudice to the petitioners. Moreover, the prosecution did not file any application seeking the denovo trial; instead, their objection in the reply is that the petitioners have filed the present application to delay the trial, which is a tactic to prolong the already delayed trial.

21. To conclude, it is clear that if the petitioners were aggrieved by an order dated 23.11.2021 vide which charges were framed, the remedy before them is to challenge the same by invoking the appropriate jurisdiction of this Court, which they did not do. Later on, by filing an application under Section 216 CrPC (Section 239 BNSS), they wanted to take advantage of the relief that R.C. Diwan had gotten from this Court because of want of sanction. However, this is a misconceived approach and a delay tactic. Regarding the question of prejudice, neither the accused nor the prosecution have been prejudiced under Section 216 (3) (4) CrPC [Section 239(3) (4) BNSS]. It is clear that even if the charges under IPC were deleted against one of the official R.C. Diwan, it cannot certainly cause any prejudice to the petitioners. The CBI has not claimed such prejudice because they did not file such an application.

22. Given the above, by no stretch of the imagination, deleting the offenses under IPC against R.C. Diwan has prejudiced the petitioner or the other co-accused. Consequently, there is no merit in the petition, and the same is, accordingly, dismissed. Interim order shall stand vacated.

Petition dismissed.

(ANOOP CHITKARA)
JUDGE

12.12.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.