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216 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1561-2021 (O&M)
Date of Decision: 04.04.2024

SUKHBIR ...Petitioner

Versus

STATE OF HARYANA AND AOTHER ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.
Mr. Vikas Bhardwaj, AAG Haryana
Mr. P.S. Sullar, Advocate
for Respondent no. 2.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present revision petition is for setting aside the impugned order dated 03.09.2021 passed by learned Additional Sessions Judge, Charkhi Dadri vide which the application filed by the petitioner-complainant under Section 216 of the Cr.P.C. for addition of charge under Sections 302, 498A/34 along with Section 304B of the IPC in the criminal case arising out of FIR No. 299 dated 30.10.2019 registered under Sections 304-B/34 of the IPC registered at Police Station Dadri City, has been dismissed.

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner-complainant lodged the FIR (supra) alleging that his daughter was married to respondent no.2-accused on 05.02.2013. After marriage, respondent no.2 along with his mother and father started harassing the daughter of the petitioner by demanding dowry and ultimately murdered her on 29.10.2019 for the same. During the investigation, respondent no.2 was arrested, whereas, his father and mother were found to be

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innocent. Consequently, the learned trial Court framed the charges against respondent no.2 on 18.01.2021 under Section 304B of IPC. Thereafter, the petitioner moved an application under Section 216 Cr.P.C. seeking addition of charges under Sections 302 and 498A read with Section 34 of IPC, which was dismissed vide impugned order dated 03.09.2021. Aggrieved by the same, the petitioner has approached this Court by way of the present revision petition.

CONTENTIONS

3. Learned counsel for the petitioner vociferously contends that respondent no.2-accused was an employee of Haryana Police at the time of the commission of the offence due to which efforts were made during the investigation so that he could get the benefit of doubt from the learned trial Court. He further submits that the police official present at the spot of occurrence prepared the recovery memo of the government issued pistol and the mobile phone of the accused but intentionally left out the part from where the said recovery was made. He further submits that it is specifically mentioned in the FIR (supra) that forensic team reached the place of occurrence and clicked photographs of the same and also prepared a DVD qua the same but the head of the forensic team who prepared the said DVD was not cited as a witness in the Challan submitted by the Special Investigation Team. It is further mentioned in the Challan that the said photographs and DVD are still to be prepared even though, the same were prepared on the spot. The Investigation Officer, in order to save the accused, intentionally omitted the information regarding the said photographs and DVD from the recovery memo dated 16.01.2020.

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4. He further submits that the said photographs clearly show that feet of the deceased, who died by hanging were touching the ground and her knees were just 6 inches above ground and she had an injury mark on her hand as proved by the PMR, which clearly shows that it wasn't suicide but murder committed by the accused. He further submits that the learned trial Court wrongly held that since the door of the room where the deceased was found hanging, was locked from inside and thus the charges under Sections 302/498A/34 of IPC could not be added, as prayed for by the petitioner. The said DVD clearly shows that the said door can easily bolted from inside by accessing the upper portion of the door and the same fact has been corroborated by the Crime Scene Visit Report. He further submits that all the aforementioned facts are sufficient to establish that the deceased was killed by hanging by respondent no.2 along with his mother and father, thereby, establishing a prima facie case against the accused under Sections 302, 498A/34 of IPC.

5. Learned counsel for respondent no.2-accused contends that the material on record does not indicate commission of an offence under Section 302 IPC even prima facie and the learned trial Court framed the charge under Section 304B after hearing both the sides. He further submits that it is nowhere the case of the prosecution that deceased was murdered by the accused rather their case itself is of suicide by the deceased and therefore, the impugned order does not warrant any interference by this Court.

ANALYSIS AND OBSERVATIONS

6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the case of the

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prosecution itself is of suicide and not of homicide. Further, the report submitted by the Crime Scene Investigation Team on 24.08.2021, prima facie, reveals the case to be of suicide as the door of the room where the alleged incident occurred was bolted from inside and the said room had a single door entry. The door of the room been broken and opened in the presence of the parents of the deceased. The said report further reveals that no signs of struggle were present in the room or on the body of the deceased. Moreover, the photographs referred to by the learned counsel for the petitioner do not prima facie suggest that it is a case of homicide. Pertinently, the Hon'ble Supreme Court in **Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh, 2020(1) R.C.R. (Criminal) 787**, has culled out the test to be adopted by the Court, while deciding the issue with regard to addition or alteration of charges and observed that Section 216 Cr.P.C. provides the Court with an exclusive and wide-ranging power to change or alter any charge but such alteration can only be done, if there was an omission in the framing of charges or the Court comes to the conclusion that a prima facie examination leads the Court to form such presumptive opinion, as to the existence of the factual ingredients constituting the alleged offence and such material brought on record, has direct nexus with the ingredients of the alleged offence and such power has to be exercised judiciously and to ensure that no prejudice is caused to the accused.

7. Further, it is a settled law that power under Section 216 Cr.P.C. cannot be invoked at the instance of complainant, accused or the prosecution but the power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision. A two Judge Bench of the Hon'ble

Supreme Court in **P. Kartikalakshmi v. Sri Ganesh 2017(3) SCC 347**, has held that:

“7. We were taken through Sections 221 and 222 CrPC in this context. In the light of the facts involved in this case, we are only concerned with Section 216 Cr.P.C. We, therefore, do not propose to examine the implications of the other provisions to the case on hand. We wish to confine ourselves to the invocation of Section 216 and rest with that. In the light of our conclusion that the power of invocation of Section 216 Cr.P.C. is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 Cr.P.C. If such a course to be adopted by the parties is allowed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardized.”

CONCLUSION

8. In view of the facts and circumstances of the case and the ratio of law laid down in **Dr. Nallapareddy Sridhar Reddy (supra)** and **P. Kartikalakshmi (supra)**, this Court is of the considered opinion that the trial Court has committed no error in dismissing the application seeking amendment of charges. Resultantly, the present petition is dismissed and the order dated 13.09.2022 passed by learned Additional Sessions Judge, Kaithal, is hereby upheld.

9. Pending miscellaneous application(s), if any, also stand disposed of.

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14. However, nothing observed in this order shall be construed as an expression of opinion by this Court and the learned trial Court is directed to decide the present case strictly in accordance with law, on its own merits.

(HARPREET SINGH BRAR)
JUDGE

04.04.2024
Ajay Goswami

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No