

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

CRM-M-46736-2023 (O&M)

Reserved on : 03.11.2023

Pronounced on : 05.01.2024

Ajay

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Mr. Abhimanyu Batra, Advocate &
Ms. Yashasvi Kapila, Advocate
For respondent No. 2/complainant.

MANISHA BATRA, J.

1. The petitioner herein is seeking indulgence of this Court by filing this petition under Section 482 Cr.P.C., thereby seeking quashing of order dated 12.07.2023 (*Annexure P-10*), passed by the Judicial Magistrate First Class, Palwal in case arising out of FIR No. 55 dated 21.07.2018, registered under Sections 354-A, 376, 450, 506 of the IPC and Section 67 of the Information Technology Act at Police Station Women, Palwal, whereby an application filed by respondent No. 2/complainant under Section 216 Cr.P.C., for making

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amendment in the charges already framed and for committing the case to the Court of Sessions, had been allowed.

2. The aforementioned FIR had been registered on the basis of the written complaint submitted by the complainant/victim (*name withheld*) alleging therein that about one month prior to 21.07.2018, she was sleeping in her house when at about 11:00 PM, the present petitioner entered therein. She had woken up but the petitioner covered her face with a handkerchief thereby making her unconscious and while extending threats to her, he committed rape upon her. During that time, he had also taken her photographs. She was threatened not to disclose about the incident to anyone. She, being a widow and in order to save her dignity, did not disclose about the incident to anyone but taking advantage of the same, the petitioner started blackmailing her and forcing her to indulge into sex with him again and again, otherwise to make her photographs viral. On her refusal, he even got her objectionable photographs made viral, thereby insulting and defaming her. Initially, a case under Sections 354-A, 376, 450, 506 of the IPC and Section 67 of the Information Technology Act had been registered on the basis of her complaint. The petitioner was arrested. During the course of investigation, offences punishable under Section 354-A, 376, 450 and 506 of the IPC were deleted and offences punishable under Sections 354-D and 509 of IPC only were added.

3. It is relevant to mention here that during trial of the petitioner, an application was moved by the prosecution under Section 323 Cr.P.C. for committing the case to the Court of Sessions on the plea that a case for commission of offence of rape upon the victim had been made out. The trial Court dismissed the said application, vide order dated 02.11.2021. After recording the sworn statement of the victim by way of examination-in-chief and

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prior to conducting of her cross-examination, an application was filed by the victim under Sections 216 and 323 of Cr.P.C. seeking amendment in the charges already framed for framing additional charges under Section 376 IPC as against the petitioner and for committing the case to the Court of Sessions. The trial Court allowed the said application, vide order dated 12.07.2023, by observing that a *prima facie* case for commission of offence punishable under Section 376 IPC had been made out and committed the case to the Court of Sessions. Feeling aggrieved, the petitioner has challenged the impugned order by way of filing the present petition.

4. Learned counsel for the petitioner vehemently argued that the impugned order was not sustainable in the eyes of law as while passing the same, the trial Court ignored the well established position of law to the effect that no application either on behalf of the victim or the prosecution could be entertained under Section 216 Cr.P.C. as the powers under this section were confined with the Court exclusively and with none else. The second argument raised by him was that since offences under Sections 376 and 506 of IPC had already been deleted during the course of investigation, therefore, the trial Court could not pass any order that a case for commission of offence punishable under Section 376 IPC was made out. He lastly argued that once the trial Magistrate had dismissed the application of the prosecution filed under Section 323 Cr.P.C., then allowing the application filed by the victim under Section 216 Cr.P.C. on the same grounds amounted to reviewing its own order, which could not be held to be valid. Hence, he urged that the petition deserved to be accepted. To fortify his arguments, learned counsel for the petitioner placed reliance upon authorities cited as *P. Kartikalakshmi vs. Sri Ganesh : 2017 (3) SCC 347* and *Amrinder Pal Singh vs. State of Punjab and another, 2023 (1) RCR (Criminal) 594*.

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5. Learned State counsel, assisted by learned counsel for the complainant, on the other hand, repudiated the above submissions by arguing that there was no bar for the trial Court to entertain the application under Section 216 Cr.P.C. as filed by the public prosecutor/complainant for alteration/addition of charge and as such there is no force in the arguments so raised. In this context, he referred to the judgment passed by Hon'ble Supreme Court in ***Dr. Nallapareddy Sridhar vs. State of Andhra Pradesh and others : 2020 (1) RCR (Criminal) 787***, wherein it was on an application filed by the public prosecutor under Section 216 Cr.P.C. for alteration/addition of charge that the trial Court had framed additional charges at the stage when the case was reserved for pronouncement of the judgment. He further argued that it was not a case where the allegations that the victim was subjected to rape by the petitioner were levelled for the first time but the same had been levelled at the time of lodging of FIR, recording statement of the victim under Section 164 Cr.P.C. and even at the time of filing application under Section 323 Cr.P.C. Hence, he argued that the ratio of law as discussed in ***Amarinder Pal Singh's*** case (supra) rather supported the case of the victim. The last submission as made by him is that the order passed by the trial Court while dismissing the previous application filed under Section 323 Cr.P.C. did not create any bar against the prosecution or complainant to move an application under Section 216 Cr.P.C. While stressing that the impugned order did not suffer from any error or infirmity in law and it had been passed after duly appreciating the evidence produced on record, he urged that the present petition was liable to be dismissed.

6. Due deliberations have been given to the contentions raised by both the parties, besides minutely scrutinizing the material placed on record.

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7. At the outset, I consider it relevant to mention that the allegations in the FIR were that one month prior to lodging of the same, the present petitioner had entered into the house of the victim; had started molesting her and then by putting a handkerchief on her face and making her unconscious, had committed rape upon her. Though, initially the FIR was registered under Sections 376, 354-A, 450 and 506 of the IPC but during the course of investigation, offences punishable under Sections 354-D and 509 of IPC have been introduced, whereas the above mentioned offences were deleted, on the basis of the statements stated to have been recorded by the victim and her father. It is also revealed from the record that just after presentation of challan in the Court, an application under Section 323 Cr.P.C. had been moved by the prosecution for committing the case to the Court of Sessions by reiterating the allegations that rape was committed by the victim. The trial Court had dismissed that application, vide order dated 02.11.2021 by observing that at that stage, nothing was on record to show that the said offence had been committed. Now, in this backdrop, the arguments addressed by both the sides have to be considered. Since the main thrust of the arguments as raised by the petitioner was that the victim or the prosecution has no *locus standi* to file an application for addition/alteration of charge, therefore, the first question that requires determination by this Court is as to whether *de facto* complainant could seek addition/alteration in charge by filing any application or not? At this juncture, reference is made to **P. Kartikalakshmi's** case (supra), wherein Hon'ble Supreme Court had observed that the power vested in the Court is exclusive to the Court and there is no right vested in any party to seek for such addition or alteration by filing any application under Section 216 Cr.P.C. as a matter of right. It may be that if there was an omission in the framing of 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 Cr.P.C. to either alter or add charge and that such power is available with the Court at any point of time before the judgment is pronounced. Further, in **Amarinder Pal Singh's** case (supra), which is a recent judgment passed by a coordinate Bench of this Court, while relying upon **P. Kartikalakshmi's** case (supra), it was observed that the power to 'alter' or 'add' charge at any time before pronouncement of the judgment is exclusively vested in the trial Court and neither the prosecution nor the accused can claim alteration or addition of charge as a matter of right. The Court is vested with the wide and pervasive power to alter or add charge prior to pronouncement of the judgment. However, it cannot make out a new case i.e. change of pith and substance or heart and soul of chargesheet. It further observed that the discretionary power cannot be comprehended to include power to make out a totally new case.

8. Before delving further, let us refer to Section 216 Cr.P.C., as per which, the Court is authorized to alter or add to the charge at any time before the judgment is pronounced. This provision provides to Court an exclusive and wide ranging power to change or alter any charge. 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 alleged offence.

9. It goes without saying that the powers to add/alter charge under Section 216 Cr.P.C. can be exercised at any stage of investigation/trial including at the time of just before pronouncement of the judgment. In this case, the allegations that the victim had been subjected to rape had been levelled at the

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time of lodging of FIR itself. Due to the fact that the offence under Section 376 IPC was deleted during the course of investigation, it cannot be stated that the pith and substance of the allegations, which were originally levelled by the victim against the petitioner, had been changed. Rather, the FIR was the foundation of the commencement of the investigation, mainly on the allegations of rape itself. On account of deletion of offence punishable under Section 376 IPC and certain other offences in the challan report filed under Section 173(8) Cr.P.C., the trial Court had initially framed charges under different sections of IPC. However, when in the statement recorded by the victim before the trial Court, the previous allegations qua her being subjected to rape were reiterated by her, it cannot be stated that an entirely new case had been invoked or the victim had come out with a new set of allegations/story. Undoubtedly, the victim could not seek for addition or alteration in charge by filing any application under Section 216 Cr.P.C. as a matter of right but the trial Court, in exercise of its best wisdom and on going through the material placed on record in the form of the statement of the victim, came to the conclusion that at that stage a *prima facie* case for commission of offence punishable under Sections 376 and 506 of IPC had been made out against the petitioner. The victim had moved the application at the first available opportunity. She might not have a vested right to seek addition/alteration in charge but at the same time, it also cannot be stated that she had no right at all to move an application under Section 216 Cr.P.C. The *prima facie* evidence available on record at that stage enabled the Court to exercise power under Section 216 Cr.P.C., irrespective of the fact that the same was invoked on filing of application by the complainant/prosecution and the same already stood vested in it even otherwise. In ***Dr. Nallapareddy Sridhar***'s case (surpa) also, it was on an application filed by the public prosecutor that

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additional charges were framed. Even in *Amarinder Pal Singh*'s case (supra), the order allowing amendment/addition in the chargesheet was quashed keeping into consideration several circumstances to the effect that the charges were framed seven years prior to filing of said application at the time when the evidence of prosecution as well as defence had been closed and the matter was listed for final argument. Not only this, the prosecution wanted to rest foundation of its case on a totally new set of allegations, though no such new evidence had come on record which compelled the trial Court to pass the impugned order and it was not only on the ground that the Court had not framed fresh chargesheet at its own, whereas this is not the position in the present case. More so, it is also not a case where it can be stated that the application has been filed to delay the proceedings or to cause prejudice to the petitioner. Rather, obviously the is going to be allowed to have a fair trial.

10. On an overall conspectus of the matter, it can be stated that though the complainant had no vested right to move application for alteration/addition of charge but at the same time, in view of the observations made by Hon'ble Supreme Court in *P. Kartikalakshmi*'s case (supra) to the effect that Section 216 is an enabling provision for the Court to exercise powers under such contingencies which comes or brought to its notice, I am of the considered opinion, the trial Court was well within its right to decide the application moved by the prosecution/complainant under Section 216 Cr.P.C. for framing of additional charge once it was satisfied that a *prima facie* case under Section 376 IPC had been made out as after such addition/alteration, irrespective of the fact that the same was ordered to be made by the Court at its own or on an application moved by the prosecution/complainant, it will be open for the parties to work out

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their remedies in accordance with law when the final decision is rendered as observed by Hon’ble Suprme Court in *P. Kartikalakshmi*’s case (supra).

11. With these observations, it is held that no ground has been made out to interfere with the impugned order. Accordingly, the present petition is dismissed.

05.01.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>