



2024:DHC:6746



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 2nd August, 2024
Pronounced on: 4th September, 2024

+ CRL.REV.P. 882/2019

‘X’

.....Petitioner

Through: Mr. Robin Raju, Advocate.

versus

STATE AND OTHERS

.....Respondents

Through: Mr. Hemant Mehla, APP for the State.
Mr. Rajiv Mohan, Mr. Rakesh Tiwari and
Mr. Sachit Sharma, Advocates for R-2 to
4.
Mr. Harsh Prabhakar, Mr. Dhruv
Chaudhry, Mr. Anjana Prabhakar, Mr.
Anirudh Tanwar, Mr. Adeeb Ahmad and
Ms. Eshita Pallavi, Advocates for R-5.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present revision petition under Section 397 read with Section 399 Code of Criminal Procedure, 1973 ('Cr.P.C') challenges the order dated 02.05.2019, passed by the learned Additional Sessions Judge, (POCSO Act) -05, Central, Tis Hazari Courts, Delhi in case FIR No. 273/2018, under Sections 354/376/377 of the Indian Penal Code, 1860 ('IPC') and Sections 6/21 of the Protection of

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Children from Sexual Offences Act, 2012 ('POCSO Act') and Sections 75/79 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act') registered at P.S. Karol Bagh.

2. *Vide* the impugned order, the learned ASJ, dismissed the application under Section 216 of the Cr.P.C. preferred by the present petitioner seeking addition/alteration of charge with respect to respondents no. 2 to 5, namely, Kapil Bhatia, Jugal Kishore Bhatia, Kanta Bhatia and Dharna Bhatia respectively. The said application under Section 216 of the Cr.P.C. sought addition of charges under Sections 370/377 of the IPC, Section 3(1)(h)(w) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 ('SC/ST Act') and Section 16 of the Bonded Labour System (Abolition) Act, 1976 ('BLA'). During the course of the arguments before the Learned Trial Court, the submissions were made only with respect to Section 370 of the IPC and Section 16 of the BLA.

3. The relevant facts necessary for adjudication of the present petition are as under:

- i. On 12.06.2018, upon an information received, a raid was conducted at the house of respondents no. 2 to 5, from where the present petitioner was rescued and her statement was recorded.
- ii. The aforesaid FIR was registered on the statement of the petitioner, wherein she alleged that she was working in the house of respondent no. 2 for the last 3 years and she was not permitted to leave the house and not given any money for work. She further alleged that respondent no. 2/Mr. Kapil Bhatia has been sexually exploiting her every day in the manner as described in the complaint. It was also alleged that respondent no. 2 was



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also sexually exploiting another girl namely 'A', who was also working in that house. She further alleged despite several requests made by her, she was neither allowed to return to her house nor permitted to leave from there. She further alleged that she was made to work from 06:00 AM to 11:00 PM and was made to sleep on the floor and given stale food to eat. She has also alleged that she informed the wife of respondent no. 2, i.e., respondent no. 5 about the sexual exploitation, however, she did not believe her.

- iii. She further alleged that all the family members of respondent no. 2, Kapil Bhatia including respondents no. 3 and 4 were aware about she being sexually exploited, however, none took any action. She further alleged that she was brought to the house of respondent no. 2 by one Fagu from her native village in Jharkhand, and that respondent no. 2 did not permit her to even contact Fagu.
- iv. After registration of the FIR and during course of investigation, the petitioner's/complainant's statement under Section 164 of the Cr.P.C. was recorded and chargesheet was filed.
- v. *Vide* order dated 18.12.2018, the Learned ASJ after hearing the arguments of both the sides, proceeded to frame the charges against the respondents in the following manner:
 - a. Against respondent no. 2: Sections 354/354A/354B/344/376(2)(n) of the IPC, Sections 6/12 of the POCSO Act and Sections 75/79 of the JJ Act.
 - b. Against respondents no. 3 to 5: Section 21 of the POCSO Act and Sections 75/79 of the JJ Act.



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- vi. The Learned counsel for the petitioner before the Learned Trial Court filed written submissions wherein it was urged that provisions of Section 3 of the SC/ST Act, Section 370 of the IPC and Section 6 of the BLA should also be framed against respondents no. 2 to 5.
- vii. After framing of the aforesaid charges, the Learned Trial Court listed the matter for prosecution evidence. Examination-in-chief of the petitioner started on 15.01.2019. During the aforesaid examination, the present application under Section 216 of the Cr.P.C. was filed on behalf of the petitioner and was dismissed by the Learned ASJ *vide* the impugned order.
- viii. Hence the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Learned counsel appearing on behalf of the petitioner, at the outset, submitted that in the present petition, he is only pressing for addition of charge under Section 370 of the IPC only and is not pressing for charges to be framed under Section 16 of the BLA. Learned counsel for the petitioner further submitted that it is a settled law that the charges are framed based on a strong suspicion and detailed appreciation of evidence is not required at the stage of framing of charges. Reliance was placed on a judgment passed by the learned Single Bench of this Court in **Shri. Kusam Lata v. State (Govt. of NCT Delhi), 2022 SCC OnLine Del 1100.**

5. Learned counsel for the petitioner submitted that Section 370 of the IPC is attracted in the present case as she was lured by the respondents. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Sartaj Khan v. State of Uttarakhand, 2022 SCC OnLine SC 360.**



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6. It is submitted that the petitioner was a native of Jharkhand and respondents no. 2 to 5 hired her knowing that she could be exploited as she had no roots in Delhi and had a poor financial background. It is urged that the respondents no. 2 to 5 had the requisite *mens rea* as they hired a domestic worker from outside Delhi and if only domestic service was required, they could have hired anybody from Delhi itself. It is further submitted that despite filing detailed written submissions before the Learned Trial Court, elucidating grounds to add Section 370 of the IPC, the learned Trial Court did not consider the same and *vide* the aforesaid order dated 18.12.2018, did not frame charge under Section 370 of the IPC.

7. Learned counsel for the petitioner also placed reliance on the following judgments:

- I. **Amit v. The State (Govt. of NCT of Delhi), passed by the learned Single Judge of this Court in Criminal Revision Petition No. 513 of 2019 on 13.05.2019.**
- II. **Mahender Singh v. State of NCT of Delhi & Ors., (2020) SCC Online Del 1760**
- III. **X v. Government of NCT of Delhi, (2022) SCC Online Del 3291**
- IV. **Ajay v. State of Haryana, (2024) SCC Online P&H 561**
- V. **Dr. Nallapareddy Sridhar Reddy v State of Andhra Pradesh and Ors., (2020)12 SCC 467**

Reliance was placed on the above judgments to submit that an application under Section 216 of the Cr.P.C. can be filed at the instance of the survivor and that the decision thereon would be revisable under Section 397 of the Cr.PC.



SUBMISSIONS ON BEHALF OF RESPONDENTS NO. 2 TO 4

8. Learned counsel appearing on behalf of respondents no. 2 to 4 drew attention of this Court to the allegations made in the present FIR, wherein it has been stated by the petitioner that she had come to Delhi with one Fagu, who hailed from her village. Attention of this Court was further drawn to the order dated 18.12.2018 to demonstrate that the Learned Trial Court have noted the submissions made on behalf of the petitioner and thereafter proceeded to frame charges as pointed out herein before. It is submitted that aforesaid order on charge was never challenged by the petitioner in any forum. Attention of this Court was further drawn to portions of examination in chief of the petitioner recorded before the Learned Trial Court to demonstrate that respondents no. 2 to 5 used to deposit her salary in the bank account of her father directly and that she was employed by the said respondents on the recommendation of Fagu.

9. It was further submitted that the application under Section 216 of the Cr.P.C. moved by the petitioner was on the same grounds which were urged before the Learned Trial Court at the time of arguments on charge. It is also submitted that no reliance was placed on the testimony recorded of the petitioner before the Learned Trial Court seeking addition of charge under Section 370 IPC as no material had come on record for the same. It is further submitted that the allegations as contained in the FIR and the material brought on record by way of chargesheet does not make out a case under Section 370 of the IPC.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 5

10. Learned counsel appearing on behalf of respondent no. 5 submits that the latter is the estranged wife of respondent no. 2. It is submitted that on account of



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an estranged relationship with respondents no. 2 to 4, the present respondent no. 5 was living with her two daughters on the first floor of the house while the other respondents were living on the ground floor. Allegations with respect to the present respondent by the petitioner was that despite being informed she was being sexually exploited at the hands of respondent no. 2, the said respondent did not believe her and took no steps to help the petitioner.

11. It is submitted that the application under Section 216 of the Cr.P.C. filed on behalf of the petitioner was unsigned, even though, admittedly, she was a major at that time. It is further submitted that even the affidavit in support of the present petition is defective as recitals reflect that the same were not explained to the petitioner in vernacular and is an affidavit which is normally filed with a Public Interest Litigation.

12. It was further submitted that the deposition of the petitioner before the Learned Trial Court does not make out a case under Section 370 of the IPC. The relevant portions of the deposition of the petitioner/complainant before the learned Trial Court have been placed on record and are reproduced herein below:

“...Q11. Whether Fagu used to come to collect money from the accused persons?”

Ans. No Accused J.K.Bhatia and Kapil Bhatia used to deposit my salary in the bank account of my father directly...” [Examination in Chief of Victim/Petitioner dated 15.01.2019] [PDF Pg. 272]

...Q3. I put it to you that you were employed by Kapil Bhatia & J.K.Bhatia on the recommendation of Fagu.



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Ans. It is correct [PDF Pg. 307]

Q4. I put to you that accused Dharna Bhatia did not give salary to you at any point of time.

Ans. It is correct. [PDF Pg. 307]

Q5. I put to you that accused Dharna Bhatia did not give your salary to Fagu and your family members at any point of time.

Ans. It is correct. Vol. J.K.Bhatia and Kapil Bhatia used to deposit my salary in the bank account of my family..." [Cross Examination of Victim/Petitioner dated 04.06.2019] [PDF Pg. 307]

...Q16. Whether you were carrying your Aadhar Card when you first time left your native village with Smt. Anju?

Ans. At that time, I was not having my Aadhar Card, but when I went to my native village from Haldwani for four months, I got prepared my Aadhar Card at Jharkhand. When I came to Delhi, I was carrying that Aadhar Card with me. [PDF Pg. 251]

Q17. What was the purpose of carrying the Aadhar Card?

Ans. The purpose was to show my date of birth to the prospective employer and to let him know my parentage and my address..." [Cross examination of the Victim/Petitioner dated 16.02.2019] [PDF Pg. 251]

Q8. Whether you used to go out with accused Kanta Bhatia for their work or for your own work also?



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Ans. I used to go out for their work as well as for making purchases for myself of articles like shampoo, soap etc...”[Examination in Chief of the Victim/Petitioner dated 15.01.2019] [PDF Pg. 251]

“...Court Question : Whether you were having mobile phone with you?

Ans. Yes. I was having a mobile phone. Its number is 8826519817. [PDF Pg. 252]

Court Question : From where did you get the mobile phone?

Ans. I had requested the tenants who used to live on the second floor of house of accused persons and they had arranged a mobile phone for me in March, 2018...” [Examination in Chief of the Victim/Petitioner dated 15.01.2019] [PDF Pg. 252]

“...Q.14. I put to you as to whether after coming to Delhi, you were in touch with Sh. Laxman?

Ans. Yes. I was having his mobile number and was in regular touch with him...” [Cross Examination of Victim/ Petitioner dated 16.02.2019] [PDF Pg. 252]”

13. It is submitted that in the case of **Shri. Kusum Lata (supra)**, relied upon by the petitioner, the facts are totally distinguishable. It is submitted that in the said case, there was electronic evidence to demonstrate selling and buying of children and additionally, during investigation, it was revealed that the petitioner therein had sold a male child earlier who was subsequently recovered. In the said case, it is submitted that petitioner was running a clinic for facilitating adoption



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and therefore the Hon'ble Court observed with regard to existence of strong suspicion of a planned syndicate for buying and selling of children. Similarly, in **Sartaj Khan (supra)**, the evidence was with respect to the victim being lured by promising her to take her to a destination for shopping and that the evidence therein established that the victim was lured into coming to India. In **Nallapareddy Sridhar Reddy (supra)**, there were two chargesheets were filed and the learned Trial Court while framing charge erred in not noticing the 2nd chargesheet for the offences punishable under Sections 406/420 IPC.

ANALYSIS AND FINDINGS

14. Section 216 of the Cr.P.C. reads as under:

“Section 216 – Court may alter charge

1. Any Court may alter or add to any charge at any time before judgment is pronounced.
2. Every such alteration or addition shall be read and explained to the accused.
3. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
4. If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
5. If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”



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15. While interpreting the aforesaid provision, the Hon'ble Supreme Court in **Dr. Nallapareddy Sridhar Reddy (Supra)**, observed and held as under:

16. Section 216 appears in Chapter XVII CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. **The phrase “add to any charge” in sub-section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done “at any time before judgment is pronounced”.** Sub-section (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 the additional or alternative charge is the original charge. Sub-section (4) contemplates a situation where the addition or alteration of charge will prejudice 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. Section 217 CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.

17. The decision of a two-Judge Bench of this Court in *P. Kartikalakshmi v. Sri Ganesh* [*P. Kartikalakshmi v. Sri Ganesh*, (2017) 3 SCC 347 : (2017) 2 SCC (Cri) 84], dealt with a case where during the course of a trial for an offence under Section 376 IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 IPC. F.M. Ibrahim Kalifulla, J. while dealing with the power of the court to alter or add any charge, held : (SCC p. 350, para 6)

“6. ... Section 216 CrPC 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 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.”

(emphasis supplied)

18. In *Anant Prakash Sinha v. State of Haryana* [Anant Prakash Sinha v. State of Haryana, (2016) 6 SCC 105 : (2016) 2 SCC (Cri) 525], a two-Judge Bench of this Court dealt with a situation where for commission of offences under Sections 498-A and 323 IPC, an application was filed for framing an additional charge under Section 406 IPC against the husband and the mother-in-law. After referring to various decisions of this Court that dealt with the power of the court to alter a charge, Dipak Misra, J. (as the learned Chief Justice then was), held : (SCC p. 116, paras 18-19)

“18. ... the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 CrPC.

19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial.”



(emphasis supplied)

19. In *CBI v. Karimullah Osan Khan* [*CBI v. Karimullah Osan Khan*, (2014) 11 SCC 538 : (2014) 3 SCC (Cri) 437], this Court dealt with a case where an application was filed under Section 216 CrPC during the course of trial for addition of charges against the appellant under various provisions of IPC, the Explosives Act, 1884 and the Terrorist and Disruptive Activities (Prevention) Act, 1987. K.S.P. Radhakrishnan, J. speaking for the Court, held thus : (SCC p. 546, paras 17-18)

“17. Section 216 CrPC gives considerable power to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions “at any time” and before the “judgment is pronounced” would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice, but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court.”

(emphasis supplied)

20. In *Jasvinder Saini v. State (NCT of Delhi)* [*Jasvinder Saini v. State (NCT of Delhi)*, (2013) 7 SCC 256 : (2013) 3 SCC (Cri) 295], this Court dealt with the question whether the trial court was justified in adding a charge under Section 302 IPC against the accused persons who were charged under Section 304-B IPC. T.S. Thakur, J. (as he then was) speaking for the Court, held thus : (SCC pp. 260-61, para 11)

“11. A plain reading of the above would show that the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals



with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. *The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.*"

(emphasis supplied)

21. 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.

(emphasis supplied)



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16. In view of the aforesaid legal position, it is clear that the provisions of Section 216 of the Cr.P.C. can be exercised at any stage before the pronouncement of judgment if, in the opinion of the Court, the material on record has a direct link or nexus with the ingredients of the offence. A learned Single Judge of this Court in **X v. State (Govt. of NCT of Delhi) and Ors, 2022 SCC OnLine Del 3291**, has observed and held as under:

“**14.** A careful perusal of Section 216CrPC and the scheme of Chapter XVII CrPC does not indicate that the trial court is required to pronounce its judgment on charges at multiple stages. Neither Chapter XVIII nor Chapter XIX CrPC envisages multiple orders on charges. Once charges are framed, the trial court is to proceed with the trial for recording evidence as per law and to pass judgment of acquittal or conviction. The mandate of 216 CrPC is not to scuttle the process of trial at intermittent stages but to enable the trial court to see whether it is required to alter or add any charge. This exercise of altering or adding may not be required in each trial and will depend upon the facts of individual trial whether such an exercise is warranted or not. The power under Section 216 CrPC is exercisable at any time before the judgment is pronounced. For exercise of such power, no application, oral or written, is necessary, however, there is no bar if any oral or written request is made but the same is not necessarily to be dealt with immediately, else the accused or the complainant at every stage may require the trial court to pass orders. The same would completely frustrate the purpose of speedy trial and the trial court would be compelled in deciding the trial in piecemeal.”

17. In the present case, as noted hereinabove, the order on charge was passed on 18.12.2018. The Trial had commenced, and the petitioner had been examined-in-chief and partly cross-examined as PW-1, when the application under Section 216 of the Cr.P.C. was filed before the learned Trial Court. The Learned Trial Court taking note of the same proceeded to dispose of the said application by observing in the following manner:



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“12. In the present case, the charges were framed by my Ld. Predecessor vide order dated 18.12.2018 and a detailed order in this regard has been passed. Ld. Predecessor has already taken notice of all the allegations against the accused persons and, thereafter, framed the charges and the matter was fixed for examination of victim who has been examined in chief and partly cross-examined as PW 1.

13. Ld. Counsel for applicant has not challenged the aforesaid order dated 18.12.2018 and, therefore, the present application at this belated stage, is devoid of any merit. Furthermore, the addition of the aforesaid Sections into the charges against the accused persons pressed for by Ld. Counsel for applicant are not made out. For attracting Section 370 of IPC which pertains to trafficking of a person, it is incumbent upon the prosecution that the person who used a person for the purpose of exploitation and (a) recruits (b) transports (c) harbours (d) transfers or (e) receives, a person or persons, by using threats, used force or coercion, abduction, fraud or deception by inducement and none of the ingredients is present in the present case.

14. The contention of the applicant that Section 16 of BLA is applicable, is without any merit as in the present case, it is not the case of the prosecution that there is relationship between victim and the present accused persons of debtor and creditor as defined U/s 2(e) of BLA while defining of BLA.

15. Reliance placed by Ld. Counsel for applicant on the Judgment of **Bandhua Mukti Morcha Vs. Union of India (UOI) and Ors. (1984) 3 SCC 161** is misplaced as the said Judgment has been given in the facts and circumstances obtaining therein for the purpose of release and rehabilitation of the labourers inducted in different employments for number of years. In the said circumstances. Hon'ble Supreme Court of India has held that there was a presumption in favour of the deprived labourers for the purpose of release and rehabilitation that they were bonded labourers. In the present case, the criminal liability on the accused cannot be fastened on the basis of aforesaid Judgment of **Bandhua Mukti Morcha** (supra) as in the said case, there was no criminal accusations U/s 16 of the BLA against the employers. For attracting the same, there should be a prima-facie case against the accused persons which is absent in the present case. While holding so, I am fortified of the Judgment in **ILR 2004 KAR 4606**



Sannasomannara Somashekarappa and Others Vs. Gorappa Rudraswamy and Others, wherein it has been held that:

"Para 9 - In the instant case, as noted the petitioners are said to have offered to the parents of the children advance of Rs. 1,000/-, Rs. 2,000/-, Rs. 1,650/- and the like and asked them to send their children to graze cattle. It is the argument of the learned Counsel for the petitioners that the amount so offered was only in the form of wages. **As required under Section 2(g) of the Act, already there must be debt or liability incurred by the parents or the persons who have been directed to work as bonded labour and further submitted that it is neither by the ascendants of the boys who had been released. There was no such creditor debtor relationship between the parents of wages to graze their cattle in advance.** It was only an offering of wages to graze their cattle in advance. Of course, engaging of child labour would be an offence elsewhere, but in my opinion the very act of the petitioners in engaging children for grazing cattle by providing food clothing etc. would not amount to exploitation of bonded labour and does not constitute bonded labour system. Rather the parents of the boys who had been freed were not being compelled or forced to send their children"

17. In view of the aforesaid facts, circumstances and settled law, the application of the complainant is devoid of any merits, therefore, the same is dismissed."

18. It is pertinent to note that the application filed on behalf of the petitioner under Section 216 of the Cr.P.C. did not rely upon any material that had come on record after framing of charge *qua* the respondents no. 2 to 5. In the said application, which has been placed on record, it was stated that the Investigating Officer had failed to register the FIR under the relevant sections and also the chargesheet wasn't filed under the appropriate sections. It is further stated in the said application that the learned Trial Court, while passing the order dated 18.12.2018, failed to consider the submission made by the complainant and the



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material placed on record. Thus, the material relied upon by the petitioner in her application under Section 216 of the Cr.P.C. were the statement of the petitioner resulting in the registration of FIR as well as her statement recorded under Section 164 of the Cr.P.C. Reliance was also placed on a Release Certificate issued under Section 12 of the BLA by Sub-Division Magistrate, Karol Bagh dated 06.08.2018.

19. In the aforesaid factual context, the proper course for the petitioner was to challenge the order on charge dated 18.12.2018 on the ground that the submission with respect to Section 370 of the IPC was not considered. Be that as it may, since the present petition has been heard at length on merits, the Court considers it appropriate to decide the issue of addition of charge under Section 370 of the IPC.

20. Section 370 of the IPC, reads as under:

“Section 370 IPC – Trafficking of persons

370. (1) Whoever, for the purpose of exploitation, (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons, by—

First.— using threats, or

Secondly.— using force, or any other form of coercion, or

Thirdly.— by abduction, or

Fourthly.— by practising fraud, or deception, or

Fifthly.— by abuse of power, or

Sixthly.— by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking.

Explanation 1.— The expression “exploitation” shall include, prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the forced removal of organs.

Explanation 2.— The consent of the victim is immaterial in a determination of the offence of trafficking.

(2) Whoever commits the offence of trafficking shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years, and shall also be liable to fine.



(3) Where the offence involves the trafficking of more than one person, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(4) Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life.

(5) Where the offence involves the trafficking of more than one minor at the same time, it shall be punishable with rigorous imprisonment for a term which shall not be less than fourteen years but which may extend to imprisonment for life.

(6) When a public servant including police officer is involved in the trafficking of a minor then such public servant shall be punished with imprisonment for life, which shall mean the remainder of that person's natural life.

(7) If a person is convicted of the offence of trafficking of minors, on more than one occasion, then such person shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life."

21. The aforesaid offence has been substituted in place of erstwhile Section 370 of the IPC by Section 8 of Criminal Law Amendment Act, 2013 (w.e.f. **02.04.2013**). Old Section 370 of the IPC was as under:

"370. Buying or disposing of any person as a slave

Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Thus, the heading of erstwhile Section 370 of the IPC "Buying or disposing of any person as a slave' had been substituted by "Trafficking of person."

22. The present new Section 370 of the IPC essentially deals with the heinous offence of trafficking of a person. It is pertinent to note that the aforesaid substitution of Section 370 of the IPC was made after the recommendation made



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in the report of the Committee of amendment of Criminal Law by Justice J.S. Verma dated 23.01.2013. The following extract from the said recommendation relevant for the present case is as under:

“9. In any event, we recommend that the definition of ‘trafficking’ contained in the Palermo Protocol ought to be adopted by the Legislatures as a definition of the offence in the Indian context, since the lack of definition of trafficking and the ineffective law enforcement in relation to trafficking and in particular the non-application of the provisions contained in the Indian Penal Code in relation to the same have actually made trafficking a huge industry which has not been brought to any critical gaze of law enforcement for reasons already cited. We believe that in order to protect the dignity of women in particular, it is necessary that the definition of trafficking as contained above must be incorporated as an independent definition in the Penal Code as a separate offence.”

23. A plain reading of Section 370 of the IPC makes it clear that for the purpose of offences of trafficking, the person/persons who for the “purposes of exploitation” either (i) recruits, (ii) transports, (iii) harbours, (iv) transfers & (v) receives a person or persons (a) by threats, or (b) using force or any other form of coercion, or (c) by abduction, or (d) practicing fraud, or deception, or (e) by abuse of power, or (f) by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received, commits the offence of trafficking. For the purpose of the present Section, the term exploitation shall include any act of physical exploitation or any form of physical exploitation, slavery, practices similar to slavery, servitude or the forced removal of organs.

24. The core or essential ingredient would be “for the purpose of exploitation”. Thus, to bring the case of respondents no. 2 to 5 under Section 370 of the IPC, it



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has to be shown that they “for the purpose of exploitation” by using the aforesaid methods, recruited or transported or harboured or received the petitioner. To charge respondents no. 2 to 5, for the offence punishable under Section 370 IPC it has to be *prima facie* shown that they had employed the petitioner for the said “purposes of exploitation”. As pointed out hereinabove, the petitioner herself stated in the FIR that she was brought by one Fagu from her village to the house of the said respondents. It has further come on record that the salary was being transferred to her father’s account. Similarly, the fact that Aadhar Card was made showing her to be of the eligible age for obtaining employment had also been prepared, and has come on record. The aforesaid Fagu is also not an accused in the present FIR. The Hon’ble Supreme Court in **State of Gujarat v. Sandip Omprakash Gupta, 2022 SCC Online SC 1727**, had observed and held as under:

53. The rule as stated by Mahajan C.J. in *Tolaram Relumal v. State of Bombay* reported in AIR 1954 SC 496, is that “if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes a penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature....” In *State of Jharkhand v. Ambay Cements* reported in (2005) 1 SCC 368, this Court held that it is a settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. The basic rule of strict construction of a penal statute is that a person cannot be penalised without a clear letter of the law. Presumptions or assumptions have no role in the interpretation of penal statutes. They are to be construed strictly in accordance with the provisions of law. Nothing can be implied. In such cases, the courts are not so much concerned with what might possibly have been intended. Instead, they are concerned with what has actually been said.



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25. From the above facts and circumstances, it cannot be said that Respondents no. 2 to 5 had employed the petitioner for the “purpose of exploitation”, the alleged sexual exploitation of the petitioner by respondent no. 2 is an act after she was employed at the house of the said respondents. The contention of learned counsel for the petitioner that the said *mens rea* ought to be deciphered from the fact that they had hired a worker from outside Delhi because if hiring a worker for domestic service was the sole intention, then they would have hired anybody from Delhi itself, is not tenable.

26. A perusal of the records would reflect that there is nothing on record to bring the case of respondents no. 2 to 5 for framing charge under Section 370 of the IPC at this stage.

27. In view of the above, the present petition is dismissed and disposed of accordingly.

28. Pending application(s), if any, also stands disposed of.

29. Needless to state, nothing mentioned hereinabove is an opinion on the merits of the case and any observations made are only for the purpose of the present petition.

30. Judgment be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA
JUDGE**

SEPTEMBER 04, 2024/bsr