

2025:PHHC:036514



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

**CRR 1476 of 2018 (O&M)
Date of Decision: 21.02.2025**

Rajneesh Mittal

...Petitioner

Versus

State of Punjab

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Viren Jain, Advocate, for the petitioner.

Mr. Deepinder Singh Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present revision petition under Section 401 Cr.P.C. with a prayer to set aside the impugned order dated 05.04.2018 (Annexure P-4) passed by the Court of Additional Sessions Judge, Ludhiana as well as charge sheet dated 05.04.2018 (Annexure P-5), whereby, the charge under Section 370 of IPC and Sections 23, 26, 17 and 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 was ordered to be framed against the present petitioner.

2. After hearing the learned counsel for the parties, on 16.11.2019, this Court had noticed the following submissions made by the learned counsel for the petitioner:-

“Learned counsel for the petitioner has raised two points; firstly, that the allegation against the petitioner is

that he had employed child labour and secondly, that the child labour was also bonded labour. He has argued that the charge has been framed against the petitioner for the offence punishable under Section 23 of Juvenile Justice (Care & Protection of Children) Act, 2000, which was abrogated by the Juvenile Justice (Care & Protection of Children) Act, 2015, which came into force w.e.f 15.01.2016, as such, charge for the offence punishable under Juvenile Justice (Care & Protection of Children) Act, 2000 could not be framed. There is no corresponding offence provided in the new Act of 2015. Learned trial Court before framing the charge, has not tried to find out as to whether any of the worker, alleged as child labour, was minor at the time of alleged commission of offence on 28.04.2016.”

3. During the course of hearing, learned counsel for the petitioner has reiterated the above submissions. He further contends that even from the allegations levelled by the complainant, no offence under Section 370 IPC and Sections 23, 26, 17 and 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 is made out against the present petitioner. Even, the alleged raid was conducted on 28.04.2016 and on the said date, the Juvenile Justice (Care and Protection of Children) Act, 2000 already stood repealed and was no more existing on the statute book. He has further placed reliance on the gazette notification dated 12.01.2016 issued by the Ministry of Women and Child Development, whereby, the Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016) had come

into force w.e.f. 15.01.2016. Thus, the charge was wrongly framed by the trial Court against the present petitioner.

4. On the other hand, learned State counsel has vehemently argued that Section 75 was incorporated in the new Juvenile Justice (Care and Protection of Children) Act, 2015 and the same reads as under:-

75. Punishment for cruelty to child:-

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform

regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees”.

Thus, the ground taken in the revision petition was not sustainable in the eyes of law. Further, no doubt, the Juvenile Justice (Care and Protection of Children) Act, 2000 already stood repealed by virtue of passing of a new Act, but as per Section 111 of the new the Juvenile Justice (Care and Protection of Children) Act, 2015, anything done or any action taken under the old Act shall be deemed to have been done under the corresponding provisions of the new Act. Thus, the charge was correctly framed against the petitioner and the impugned orders are liable to be upheld.

5. I have heard the rival contentions raised by learned counsel for the parties and perused the record carefully.

6. In fact, Section 211 Cr.P.C. provides for the contents of a charge and the same has been reproduced below:-

211. Contents of charge.

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code (45 of 1860); that it did not fall within any of the general exceptions of the said Code; and that, if it did fall within any of the five exceptions to section 300, or that, if it did fall within Exception I, one or other of the three provisos to that exception applied to it.

(b) A is charge under section 326 of the Indian Penal Code (45 of 1860), with voluntarily causing grievous

hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the said Code, and that the general exceptions did not apply to it.

(c) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definition of those crimes contained in the Indian Penal Code (45 of 1860); but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d) A is charged under section 184 of the Indian Penal Code (45 of 1860) with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words”.

From the above referred provision, it is clear that the trial Court shall consider all the documents referred to in the report under Section 173 Cr.P.C. and after examining such documents and after hearing the prosecution and the accused, if the Magistrate is of the opinion that there is a ground for presuming that the accused had committed the offence triable under that Chapter, which said Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. Even, the charge has to be read-over and explained to the accused and give sufficient notice to the accused, for which he was being tried.

7. Now coming to the facts of the present case, it is apparent from the record that the Ministry of Women and Child Development had published the gazette notification on 13.01.2016 and the Union Government had fixed 15.01.2016 as the date, on which the Juvenile Justice (Care and Protection of Children) Act, 2015, (Act No. 2 of 2016) had come into force. It is also an admitted fact that the alleged raid was conducted by the officials in the present case on 28.04.2016 and on the said date, the old Act, i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000, had already been repealed. Thus, the trial Court had wrongly framed charge against the present petitioner under Section 370 of IPC and Sections 23, 26, 17 and 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. Thus, without commenting any further on the merits of the rival contentions raised on behalf of both the sides, the impugned order dated 05.04.2018 (Annexure P-4) passed by the Court of Additional Sessions Judge, Ludhiana as well as charge sheet dated 05.04.2018 (Annexure P-5), are set aside and the case is remanded back to the trial Court to reconsider the framing of charge against the petitioner and any other accused, who might have been tried alongwith the petitioner.

8. Needless to observe that both the parties shall be at liberty to raise their respective submissions before the trial Court and the trial Court shall take into consideration the submissions made by

both the sides. With these observations, the petition stands disposed off.

9. All pending applications, if any, are disposed off, accordingly.

21.02.2025

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No