



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

CRM-M-49157-2018

Date of Decision:06.04.2026

Harbans Lal

...Petitioner

Vs.

State of Punjab

...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Ritesh Pandey, Advocate
for the petitioner.

Mr. M.S Bajwa, DAG, Punjab.

Mr.S.K Chaudhary, Advocate
for the complainant.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the order dated 18.10.2018 (Annexure P-5), passed by the Court of Additional Sessions Judge, Gurdaspur, whereby, the prayer of the petitioner for re-calling the prosecution witnesses for cross-examination was declined in a case arising out of FIR No.30, dated 12.05.2016, under Sections 354-A of IPC and Section- 8 of the Protection of Children from Sexual Offences, Act (hereinafter referred to as the "Act").

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in the F.I.R mentioned above. The F.I.R was initially registered under Sections 354-A of IPC and Section- 8 of the "Act". The police investigated the matter and finally presented the challan against the petitioner under Section- 8 of the "Act". Vide order and charge-sheet dated 22.08.2016,

the Court of Sessions Judge, Gurdaspur found a prima facie case under Sections 354-A of IPC and Section- 8 of the “Act” against the petitioner and he was ordered to be charge-sheeted, accordingly. Thereafter, the witnesses of the prosecution were examined and were also cross-examined. At this stage, the prosecution moved an application for alteration of charge and the said application was allowed by the Trial Court. Again, vide order and charge-sheet dated 16.08.2017, the petitioner was again charge-sheeted for commission of the offence under Section 376 IPC and Section- 8 of the “Act”. Thereafter, no Presiding Officer was available and the case was adjourned on different dates. Thereafter, the learned counsel for the petitioner appeared before the Trial Court and made a prayer that in the present case, the charge was amended later on and all the witnesses were required to be re-examined and cross-examined and the case was adjourned to 18.10.2018 for consideration on the same issue. However, vide order dated 18.10.2018, the prayer of the petitioner for re-examining and cross-examining the prosecution witnesses was declined. Learned counsel submits that in fact, while passing the impugned order, the Trial Court had completely overlooked the mandatory provisions of Sections 216 & 217 of Cr.P.C and the impugned order is unsustainable.

3. On the other hand, learned State counsel assisted by learned counsel for the complainant have vehemently opposed the submissions made by learned counsel for the petitioner on the ground that the petitioner was trying to approach the prosecution witnesses and in case, the witnesses are re-called for further cross-examination, they may not support the case of the prosecution, under the influence of the petitioner. Still further, the Public Prosecutor had already made a statement that they would not examine any witness after the

amendment of the charge and consequently, the prayer of the petitioner has been rightly declined by the Trial Court.

4. I have heard the learned counsel for the parties and with their able assistance, I have gone through the record carefully.

5. Before proceeding any further, it would be appropriate to reproduce Sections 216 & 217 Cr.P.C.

216. Court may alter charge-

(i) Any Court may alter or add to any charge at any time before judgment is pronounced.

(ii) Every such alteration or addition shall be read and explained to the accused.

(iii) 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.

(iv) 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.

(v) 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.

217. Recall of witnesses when charge altered-

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed—

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material.

6. A bare reading of Section 216 Cr.P.C reveals that it is permissible for any Court to alter or add to any charge at any point of time, before the judgment is pronounced. However, to safeguard the interest of the accused during the trial, against whom some additional charge has been framed or the charge has been altered and a provision has been made in no uncertain terms that such a step taken by the Court during the trial should not prejudice the accused in any manner. Even, the mandatory provisions of Sub-Section 3 & 4 clearly stipulates that it has to be treated as a charge made for the first time and the trial before the Trial Court has to proceed from that stage. This position further becomes clear from reading of Section 216 (4) Cr.P.C, which empowers the Court to either direct a new trial or adjourn the trial for such period as may be necessary, in such a situation. A new trial is insisted, if the charge is all together different and distinct.

7. Even if the charge may be of the same species, the provision for adjourning the trial is made to give sufficient opportunity to the accused to prayer and defend himself. It is the main motive of introducing the provisions

of Section 217 Cr.P.C, that whenever charge is altered or added by the Court after the commencement of the trial, the prosecutor as well as the accused would be allowed to re-call or re-summon or examine any witnesses, who had already been examined with reference to such alteration or addition. In such circumstances, the Court is to even allow any further witness which the Court thinks to be material in regard to the altered or additional charge.

8. Now, testing the facts of the present case, in the light of the aforesaid principles of law, this Court has no hesitation to hold that the Trial Court has wrongly exercised the jurisdiction by completely overlooking the mandatory provisions of Section 216/217 Cr.P.C. Vide the order and charge-sheet dated 16.08.2017, the charge was altered by the Trial Court and thereafter, the Trial Court was under a legal obligation to re-call the witnesses, so that the defence counsel may cross-examine such witnesses after the amendment/alteration of charge. Still further, in a criminal trial sufficient opportunity should be granted to the prosecution as well as the defence to lead their respective evidences. Even an accused can never be denied the opportunity of fair trial by the Trial Courts. In the present case also, even if Public Prosecutor had made a statement that he did not wish to examine any witness after the amendment of charge, still the Trial Court should have re-call the witnesses for their cross-examination, by the learned defence counsel.

9. In view of the above discussion, the present petition is allowed and the impugned order dated 18.10.2018 (Annexure P-5), passed by the Court of Additional Sessions Judge, Gurdaspur is set aside and the Trial Court is directed to re-call all the witnesses, who were examined by the Trial Court before 16.08.2017 so that, they may be cross-examined by the learned defence

counsel.

10. Since, the FIR in the present case was registered on 12.05.2016 and the trial is pending for almost last 10 years, the Trial Court is directed to conclude the trial expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order.

(N.S.SHEKHAWAT)
JUDGE

06.04.2026
hitesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No