



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

142

**CRM-M-38108 of 2025(O&M)
Date of decision: 20.01.2026**

Jagbir Malhan and another

...Petitioners

VERSUS

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**Present :- Mr. Rakesh Nehra, Sr. Advocate, with
Mr. Rupender Singh, Advocate
for the petitioners.**

Dr. (Ms.) Malvika Singh, DAG, Haryana

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023, seeking quashing of the order dated 23.05.2025, passed by learned Additional Sessions Judge, Jhajjar, whereby the order dated 15.04.2025, passed by the learned Judicial Magistrate Ist Class was set aside and matter was remanded to the trial Court. Further prayer is to restore the order dated 15.04.2025, whereby the application filed under Section 216 Cr.P.C. by the complainant for framing of additional charges was dismissed.

Learned senior counsel vehemently contends that the offence under Section 452 IPC was deleted by the police during the course of investigation and therefore the subsequent addition of the said charge at this stage amounts to an improvement in the case set up by the respondents. The



trial court recorded a finding that the incident took place inside the dairy of the complainant, the same not being a place of residence, offence under Section 452 IPC is not made out. There was no occasion for alteration of the charge at a belated stage and that too after the prosecution evidence had already come to an end.

Learned counsel for the State submits that the order has been rightly passed.

I have heard learned counsel for the parties and have gone through the documents appended with the present petition as well.

The operative part of the order passed by the Additional Sessions Judge, reads thus:-

8. The case of the prosecution was launched on the application dated 03.05.2016 moved by the complainant. In the said application, he had specifically stated that on 03.05.2016 at about 01:00 am, when he was sleeping in the dairy, then all the accused persons came along with the weapon and attacked upon him. His evidence was also recorded in the Court and there also, he had specifically stated that the accused had entered into his dairy and committed the offence. Thus, there was overwhelming material on the case file which showed that the incident had occurred inside the dairy of the complainant. As per the definition of section 442 of IPC "House Trespass" means "whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass". The said offence of house trespass is punishable under section 452 of IPC. From the perusal of application of the



complainant and the evidence of the complainant as PW3 and eye-witness, namely, Manish as PW2, it is prima facie clear that the offence was committed in the dairy and hence there was a prima-facie case under section 452 of IPC but the trial Court had not considered the request of the complainant for addition of charge under section 452 of IPC. The observation of the trial Court that a dairy, while potentially a place of work or storage, is not typically considered a human dwelling is same way as a house is not correct and is not in consonance with the definition of house trespass. At this stage, the trial Court was required to see whether prima-facie case under section 452 of IPC was made out on the basis of the material available in the final report under section 173 Cr.P.C. or not. The Trial Court had wrongly observed that in the present case, nothing is available on record that the said dairy was being used by the complainant for residential purpose. It has been held by Hon'ble High Court in case titled as Ashok Kumar vs. State of Punjab and others, CRM-M-2125 of 2015 (O&M) decided on 12.02.2020 that the term "house trespass" under Section 452 IPC has a broader definition and includes private places such as shops in private occupation; trespass committed with intent to cause harm is sufficient to attract the provision. It is further held that the term "house trespass" under Section 452 IPC includes not only buildings used as dwellings or places of worship but also private places such as shops under private occupation. Trespass with intent to cause harm qualifies as "house trespass."

9. Thus, the trial Court had failed to exercise its jurisdiction while dismissing the application under section 216 Cr.P.C. moved by the complainant/victim by not considering dairy as place of human dwelling. It is



settled law and has not been disputed by the respondent that the charge can be amended at any time and even alteration or addition in charge can be made at any stage, if there is material on the case file to do so.

10. In view of my above discussion, there is merit in the revision petition and same is hereby allowed. The impugned order passed by the trial Court is liable to be modified and the application under section 216 Cr.P.C. moved by the complainant-revisionist deserves acceptance. Trial Court record be sent back alongwith a copy of this judgment with a direction to reconsider the application under section 216 Cr.P.C. moved by the complainant in view of the above observations and pass an appropriate order thereafter. Revision file be consigned to the record room, after due compliance.”

Invariably, even a place for the custody of property is sufficient to attract Section 452 IPC. The findings thus does not suffer from any legal infirmity.

Adverting to the argument that application is belated, firstly, no such argument has been raised at any stage of the proceedings either before the trial Court or before the Appellate Court. No such plea has been raised even in the petition.

However, be that as it may, Section 216 Cr.P.C. empowers submission of application at any stage. The provision reads thus:-

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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

Hence, alteration can be done at any stage before a judgment is pronounced.

Evidently, the evidence in support of the allegation, in the form of deposition by witnesses was always there. The site plan however did not corroborate the version. After the evidence of PW's were recorded, application for alteration of charge was moved. The factum as to whether the site plan is to be accepted and testimony of witnesses is to be disbelieved can be gone into only after a charge is framed and evidence recorded. The evidence of witnesses cannot be disbelieved at the outset on the basis of the site plan alone as the said aspect needs to withstand the test of cross-examination.

Under the given circumstances, I find that a mere amendment/alternation in the charge would not in any manner be construed



as returning a finding against the petitioner or proving of the charge. This aspect has to be considered in light of the evidence placed before the Court and as per equity, balance of convenience and interest of justice. The petitioner shall undisputedly have an opportunity to cross-examine the witnesses and to dispute the charge, hence, he fails to show irreparable loss or prejudice.

It is reflected from the perusal of the order passed by the Court that the prosecution witnesses i.e. PW2 and PW3 claimed that the incident in question took place in the dairy and not outside as has been claimed by the petitioner herein. The same was the consistent case of the respondents.

Even otherwise, the charges are framed on prima-facie existence of the case and since the witnesses had been categorical regarding the place of occurrence, the testimony cannot be discarded at the very outset. No prejudice would be caused to the petitioner apart from delay in final determination of the case.

Faced with with above, learned senior counsel representing the petitioner does not press the instant petition, at this stage, so as to take all objections/pleas before the trial court during the course of evidence, however, he contends that the trial court may be directed to conclude the proceedings expeditiously.

Without commenting on the merits of the case and taking into consideration the request, this court disposes off the case as not pressed but at the same time, the trial court is requested to take steps to finally determine the proceedings in a time bound manner as the matter pertains to the year 2016.



Disposed of as not pressed.

20.01.2026
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(VINOD S. BHARDWAJ)
JUDGE

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