

AFR

Court No. - 50

Case :- CRIMINAL REVISION No. - 1026 of 2023

Revisionist :- Dev Narain

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Abhay Raj Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard Sri V.K. Ojha, Advocate, holding brief of Sri Abhay Raj Yadav, learned counsel for the revisionist, Sri Deepak Kapoor, learned AGA for the State and perused the material placed on record.

2. As per the office report, service report is still awaited.

3. Keeping in view the fact that the present revision is pending since 2.2.2023 and service of notice could not be affected by learned CJM on opposite party No.2. With a view to avoid further delay in trial of the case, which is progressing before the court below, this Court is of the opinion that there is no need to wait for service of notice on opposite party No.2 and the matter may be decided on merits after hearing learned counsel for the revisionist as well as learned AGA for the State, as this is a case based on police report.

4. Instant criminal revision has been preferred against the impugned judgement and order dated 30.1.2023, passed by learned Additinal District and Sessions Judge (FTC), Chitrakoot in Sessions trial No.117 of 2016, "State vs. Dev Narain", arising out of Case Crime No.479 of 2016, under Sections 498-A, 304-B, 323 IPC & 3/4 of D.P. Act, 1961, Police Station Karwi Kotwali Nagar, District Chitrakoot, whereby the court below rejected the application 29-Kha moved under Section 216 Cr.P.C. by the revisionist for alteration of charges framed against him.

5. The brief facts of the case are that in present case FIR was lodged at the instance of opposite party No.2 Vibhuti Bhushan Garg with averment that his sister Rashmi was married to Kamal Kishore @ Satyanarayan on 22.2.2016, in which they have given sufficient cash and gifts to accused side but nonetheless the husband of his sister and his family members kept on demanding a

four wheeler and washing machine and due to non-fulfilment of demand of dowry, they were subjecting her to cruelty and also would threaten her. Prior to four days of lodging of FIR, he visited the place of in-laws of his sister and her husband and her in-laws again made demand of dowry and refused to sent her with him without fulfilment of demand of dowry. He went back to home and apprised his father by telephone about the act of accused persons. On 25.5.2016, Sri Narayan, who is elder brother of the husband of his sister, informed him that the house of his sister was locked from the outside. He rushed to the place and got the lock broken in presence of police and found the dead body of his sister and there were injuries on her person. In the FIR, the husband, Sri Narain (jeth), Dev Narain (dewar) and three relatives of her husband were named. The post mortem examination of the deceased was conducted on 26.5.2016, in which six antemortem injuries were found on her person and cause of death was found by the Doctor as coma and shock due to antemortem injuries. The death was instantaneous. Satya Narain, the husband of the deceased was found missing from the date of incident and subsequently, it was known that his dead body was found between railway track. A Nokia mobile phone (twin SIM) was also recovered near the dead body and when Sub-Inspector inserted SIM in his own mobile phone and dialled a number, one Ashok Kumar Dwivedi replied the call and stated that the said number belongs to his brother-in-law (wife's brother) Satya Narain, who came and identified the body of Satya Narain. In his postmortem report also, injuries were found on his person and cause of death was recorded as antemortem injuries leading to asphyxia, which led to cardio respiratory failure and immediate cause was found strangulation. The police investigated the case and filed charge-sheet against present revisionist and name of other accused persons barring deceased Satya Narain was dropped during investigation, as their complicity was not found in the offence of dowry death of deceased Rashmi. Accused Dev Narain, who is brother-in-law of the deceased moved an application for discharge before trial court, which was rejected by order dated 28.7.2017 and case was fixed for prosecution evidence. The accused Dev Narain, who filed a petition under Section 482 Cr.P.C. against rejection of his discharge application before this Court, which was dismissed by this Court with observation that "it is open to the applicant to move an application for alteration of charge under Section 216 Cr.P.C. before trial court". Pursuant to the observation of this Court, the sole accused Dev Narain, who is *dewar* of deceased has filed an application under Section 216 Cr.P.C., wherein he has stated that he has moved this application pursuant to the observation of

Hon'ble High Court vide order dated 9.6.2017. The factum of death of husband of deceased Kamal Kishor @ Satyanarain and recovery of his dead body from railway track was entered in GD Entry No.21, time 15:10 hours on 26.5.2016, police station Manikpur. There is no specific allegation of demand of dowry or subjecting the deceased to matrimonial cruelty is made by any witness examined by the Investigating Officer against the applicant. On the basis evidence collected during investigation. This appears that deceased Rashmi and her husband were residing in separate house and he was working in railway and they used to pickup quarrel on some issue. The key of house where dead body of deceased was lying was recovered from the pocket of cloths worn by the Kamal Kishore on recovery of his dead body. The deceased and her husband were residing separately from the revisionist and other family members and they were not concerned with daily affairs of each other. The revisionist could not be beneficiary of any demand of dowry allegedly made by husband of the deceased from deceased and her family members. There is no evidence that she was subjected to matrimonial cruelty soon or before her death. The ingredients of charges under Sections 498-A, 304-B and 323 IPC and Section 3/4 DP Act are not made out against the applicant. Therefore, the said charges are liable to be quashed and the applicant may be discharged from the charges. This application has been dismissed by the court below. Learned court below while rejecting the application has observed that on the basis of evidence on record, no error is found in charges made against the applicant on 6.9.2016, therefore, there is no question of alteration of charge. The evidence of PW-1- the informant has been recorded during trial in which he has supported his FIR version and he has stated in cross-examination also that in matter of killing of his sister, the complicity of her husband (late) and brothers-in-law Sri Narain, Dev Narain and other relatives is involved and these persons killed her.

6. Learned counsel for the revisionist while placing reliance on grounds taken in application under Section 216 Cr.P.C. moved before the court below submitted that there is no evidence or material against the revisionist which can suggest that he as in any manner involved in unfortunate death of deceased Rashmi, who was sister-in-law and married to his late brother Satya Narain. The circumstances suggests that some altercation might have taken place between the husband and wife on fateful day and they would have been involved in some altercation and she might have received fatal injuries in the altercation and thereafter in disgust and guilt, her husband would have locked the door of the house

from outside and committed suicide by being run over by a train. Therefore, the revisionist is not involved in death of the deceased in any manner. No specific averment has been made against the revisionist in FIR as well as in statement of witnesses examined under Section 161 Cr.P.C. Even PW-1 in his testimony before Court has not assigned any specific role to the revisionist in his evidence. There is nothing to connect the revisionist with alleged offence. All the accused persons were exonerated in chargesheet by the Investigating Officer and the revisionist has been chargesheeted without any sufficient reason. The charges framed against the revisionist are frivolous in nature and should have been dropped by the court below but the court below has dismissed the application moved by the revisionist under Section 216 Cr.P.C. without assigning any good reason. Therefore, the impugned order is not sustainable under law and this is liable to be set aside and this Court may be pleased to alter the charges framed against him or to pass such other order as this Court deem fit in the facts and circumstances of the case.

7. Per contra, learned AGA submitted that there is no illegality or infirmity in the impugned order passed by the court below whereby the application 29-Kha moved by the revisionist for alteration of charge under Section 216 Cr.P.C. has been dismissed and the case is being fixed for prosecution evidence. The trial is in progress and there is no good ground to quash the charges framed against the revisionist as the same will be amount to discharge and this is settled law that no order for discharge can be passed by the trial court after framing of charge and case will have to lead its logical conclusion after receiving evidence of the parties.

8. Section 216 Cr.P.C. reads as under:-

"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."

9. From perusal of above, it is apparent that the Court may alter or add to any charge at any time before judgment is pronounced but alteration of charge and deletion of charge hold different fields and these two cannot be intermingled, otherwise it will cause miscarriage of justice. This is admitted fact that the discharge application moved by the revisionist was dismissed by the trial court and the criminal revision moved by the revisionist against rejection of discharge application has been dismissed by this Court vide order dated 9.8.2017 in Criminal Revision No. 2500 of 2017, wherein this Court observed that the instant criminal revision is finally disposed of with a direction that in case, the revisionist is aggrieved with regard to the framing of the charge as on date, he may file an appropriate application at the appropriate stage when the evidence is to be produced with regard to the alteration of charge and in case, such an application is filed, the same shall be heard and decided in accordance with law after hearing all parties concerned.

10. The charge has been framed against the accused by the court below under Sections 498-A, 304-B, 323 IPC and 3/4 of D.P. Act. The evidence of PW-1 Vibhuti Bhushan Garg was recorded on 1.9.2017 to 29.5.2018 and thereafter the present application under Section 216 Cr.P.C. has been filed for alteration of charge. The case against the revisionist is that he is brother-in-law of the deceased who died inside her home on a fateful day and on the same day, dead body of her husband was found near railway track and even the keys of the house in which dead body of the deceased was found was recovered from the dead body of deceased's husband in same sequence of the evidence. Post mortem examination report of deceased Satya Narayan also suggests his homicidal death.

11. From perusal of prayer made in application under Section 216 Cr.P.C., it appears in essence that this is a prayer for discharge as the revisionist has stated that he may be discharged from charged penal sections and the charges levelled against him be quashed. The trial court in exercise of its powers under Section 216 Cr.P.C. cannot delete the charges framed by it for the said offences as the

criminal procedure code does not confers such powers on the court. The trial court can only alter to a charge or to add to a charge, which has already framed. The discharge application moved by the revisionist has already been dismissed and said order has attained finality.

12. This Court in **Application U/S 482 No.2556 of 2023 (Nanhey Bhaiya @ Nanhan Singh And 2 others vs State Of U.P. Thru. Prin. Secy.)** on 31.3.2023 held that the power of the Court under Section 216 Cr.P.C. to alter or add any charge at any time before the judgment is pronounced is exclusively confined to Court and no party has any vested right to seek any addition or alteration of charge.

13. Recently, the Hon'ble Supreme Court in **P. Kartikalakshmi Versus Sri Ganesh and another reported in (2017) 3 SCC 347**, in paragraphs No.6, 7 and 8 has held as under:-

"6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. [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.

14. This Court in the case of **Vibhuti Narayan Chaubey Alias .. vs State Of U.P, 2003 CrLJ 196** held that Section 216 of the code did not provide for deletion of a charge and that the word "delete" had intentionally not being used by the legislature. I am in agreement with this conclusion. The petitioner is seeking the deletion of a charge of conspiracy altogether that is not permissible under Section 216 of the Code. The charge once framed must lead to either acquittal or conviction at the conclusion of trial. Section 216 of the Code does not permit the deletion of the same. Subsequently, Delhi High Court in the case of **Vergheese Stephen vs Central Bureau Of Investigation, 2007 Cr.L.J. 4080**, placed reliance on aforesaid judgement of this Court in the case of Vibhuti

Narayan Chaubey (*supra*).

15. Section 222 (2) of the Cr.P.C. provides that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

16. On the basis of foregoing discussions based on facts of this case coupled with judicial authorities cited as above, I find that the revision is devoid of force. There is no illegality, irregularity or impropriety in the impugned order passed by the learned trial court and the revision is liable to be dismissed.

17. Accordingly, present revision is **dismissed**.

Order Date :- 20.7.2023

Kamarjahan