

(2024) 02 KL CK 0237

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 131 Of 2024

Johnkutty.M.V

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 27-02-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 190, 216, 228, 240, 395
Indian Penal Code, 1860 — Section 323, 332, 341, 353

Citation : (2024) 02 KL CK 0237

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : M.C. Ashi

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. Petitioner has combined various reliefs, of which the relevant one is to set aside Annexure A15 order dated 23.03.2022 framing charge against him for the offences punishable under sections 341 and 332 of the Indian Penal Code, 1860 (for short 'IPC'). Annexure A20 and Annexure A21 orders dated 27.11.2023 of the Additional Sessions Court-II, Thiruvananthapuram, are also challenged. By virtue of those two orders, the Court has dismissed petitioner's application for referring questions to the High Court under section 395 Cr.P.C and also rejected petitioner's challenge against the order framing charge as well as the challenge against the orders in two petitions filed as C.M.P. Nos.602/2022 and 603/2022.

2. The dispute arises out of an incident that occurred on 28.11.2011 at the Museum Junction at Thiruvananthapuram. Petitioner is alleged to have blocked a KSRTC stage carriage on the main road at around 7:50 PM using his car and attacked the driver of the stage carriage. A final report was filed alleging offences punishable under sections 341, 353 and 323 of IPC.

3. The case has a history which is worth mentioning to indicate how a trial has

been prolonged for a decade and more. Initially, on 07.02.2012, the Judicial First Class Magistrate Court -III, Thiruvananthapuram, took cognizance of the offences mentioned in the final report, i.e. for those under sections 341, 353 and 323 of IPC and issued process to the accused. After the accused appeared, the learned Magistrate on 27.08.2014 framed charges for the offences under sections 341 and 332 of IPC and the trial commenced. Later, consequent to examination of the defence witnesses, the learned Magistrate realized that it was not a case triable by him.

4. Thereafter, the Chief Judicial Magistrate withdrew the case to itself on 17.01.2017. Later, the accused filed C.M.P. No. 846/2017, seeking to discharge him. The said petition was dismissed, against which a revision was preferred before the Sessions Court, and by order dated 19.06.2017, the Sessions Court remanded the matter. While the question of discharge was pending consideration before the Chief Judicial Magistrate after remand from the Sessions Court, petitioner filed a revision petition as CrI.R.P. No.36 of 2018 challenging the order of the Chief Judicial Magistrate withdrawing the case from the Magistrate's Court. The said revision petition was also dismissed.

5. In the meantime, the accused filed CrI.M.C. No.838 of 2019 to quash the proceedings, which ended in dismissal, against which he approached the Supreme Court in SLP No.4344/2019, which also ended in dismissal. Petitioner then filed a review petition before the Supreme Court as R.P. No.417/2019, which was also dismissed. After all the above proceedings, petitioner filed C.M.P. No.2680/2019 before the Chief Judicial Magistrate's Court, challenging his competence to try the offence. The said petition was also dismissed by order dated 28.09.2019. The petitioner preferred another revision before the Sessions Court, and by order dated 18.01.2020, the said revision was dismissed with a cost of Rs.25,000/-. Though petitioner's challenge against the above-noted order was dismissed in W.P.(C) No.194 of 2022, the cost imposed by the Sessions Court was interfered with.

6. Till this period, C.M.P. No.846/2017 seeking discharge could not be considered by the Chief Judicial Magistrate after remand from the Sessions Court. Thereafter, on 01.02.2022, the petition for discharge was dismissed and the charge was framed for the offences under sections 341 and 332 of IPC. Petitioner pleaded not guilty to the offences on 23.02.2022. Soon thereafter, petitioner filed C.M.P. No. 602/2022 before the Chief Judicial Magistrate to review the order framing charge. Petitioner also filed C.M.P. No.603/2022 to refer three questions of law to the High Court under section 395 Cr.P.C. Both petitions were dismissed by order dated 13.04.2022. Challenging the order framing the charge and the orders dismissing the petition to review the said order and refusing to refer the questions of law to the High Court, a revision petition was filed by the petitioner as CrI.R.P. No.16/2022. The learned Sessions Judge dismissed the application by the impugned order Annexure A21.

7. Sri. Johnkutty M.V., the petitioner, appeared and argued as a party in person.

The petitioner argued that since cognizance was taken initially for the offences under sections 341, 353 and 323 of the IPC, charge could have been framed only for those offences, and the order framing charge for the offences under sections 341 and 332 IPC by the Chief Judicial Magistrate, even before taking evidence, is contrary to law and illegal. It was also submitted that cognizance of the offences was taken by the Judicial Magistrate of the First Class on the basis of the materials available in the final report, but after the case was withdrawn, there were no further materials before the court to take a different view to frame the charge for offences, for which cognizance was not taken. According to the petitioner, taking of cognizance is a judicial act and framing a charge for different offences without any new material on record amounts to a review of the order taking cognizance. It was contended that the Chief Judicial Magistrate erred in framing the charge for offences that were different from those for which the cognizance was taken.

8. Sri.M.C.Ashi, the learned Public Prosecutor, submitted that the contentions raised by the petitioner are without any basis and that it is a settled proposition of law that the court can, at any point, add or alter the charge. It was also submitted that the order taking cognizance of certain offences should not be a restraint on the court while framing the charge for other offences, even if the final report submitted to the court had different offences. The learned Prosecutor also submitted that for the last 13 years, the petitioner had successfully avoided the trial, and even after the case was withdrawn, petitions after petitions were being filed to delay the trial.

9. I have considered the rival contentions.

10. The pleadings in this case are drafted without clarity and are quite ambiguous. Still, it is understood that petitioner is agitating the question of whether, after taking cognizance of a particular offence, the court can frame a charge for different offences, even before the commencement of trial.

11. A charge is a written document containing the precise allegation and description of the offence which the court finds, from the materials produced before it, to have been allegedly committed by the accused. The purpose of a charge is to inform the accused what he is going to be tried for and to enable him to defend himself. Framing of a proper charge is vital in a criminal trial, and for that purpose, the Magistrate must bestow his careful attention to the materials in the final report. While framing a charge, the Magistrate is not restricted by the offences stated in the final report but by the materials produced before it.

12. When a Magistrate takes cognizance of the offence under section 190 Cr.P.C, though there is certainly an application of mind, it is only for the purpose of issuing process against the accused for the offences alleged. After the accused appears, and at the time of framing of charge either under section 228 Cr.P.C, by the Sessions Court, or under section 240 Cr.P.C, by the Magistrate, the Court

would be going through the prosecution papers once again and can even hear the accused. If, at that point in time, it is felt that other offences are also made out or a different offence is made out from the records, the court cannot ignore it on the technical aspect that cognizance had not been taken for those offences.

13. Nowhere in the Code is there any provision that restricts the power of the Court to frame charges for any offence, provided that the offence is made out from the records gathered by the prosecution. The terminology used in section 228 and section 240 Cr.P.C is "if the court is of the opinion that there is ground for presuming that the accused has committed an offence" and not "the accused has committed an offence mentioned in the final report". This distinction is significant and reflects the unfettered power of the court to frame charges for any of the offence made out from the records. Such power can be utilized to frame charges not only for those offences mentioned in the final report but also for offences not referred to in the final report. The conferment of such power is essential for the administration of criminal justice, as otherwise, the investigating officer will be the sole repository of the power to determine what offences must be charged against an accused.

14. In this context, reference to section 216 Cr.P.C. which enables a court to alter or add to any charge at any time before judgment is pronounced, is also relevant. The power to add or alter a charge is also a comprehensive power. An improper or erroneous charge can also be corrected under section 216 Cr.P.C. by reframing it properly.

15. In the decision in *Anand Prakash Sinha @ Anand Sinha v. State of Haryana* (2016) 6 SCC 105, it was observed that if the Court has not framed a charge despite the material on record, it has the jurisdiction to add a charge or even 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. The Court went on to hold that under section 216 Cr.P.C the charges already framed can be altered even before evidence has been let in.

16. Further in the decision in *Central Bureau of Investigation v. Karimullah Osan Khan* (2014) 11 SCC 538 it was observed that section 216 Cr.P.C. 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. It was further held that the expressions 'at anytime' 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 court should also see that its orders would not cause any prejudice to the accused.

17. It is also relevant to refer to the judgment in *P.Kartikalakshmi v. Sri.Ganesh and Another* (2017) 3 SCC 347 wherein this question came up for consideration, and the court held that the power under section 216 is vested exclusively on the

court and it is an enabling provision to exercise power under contingencies which comes to its knowledge.

18. Thus, it is evident that the power of the court to alter or add any charge is unlimited and unrestrained, which can be done at any time before the judgment is pronounced. When there are materials available before the court to frame a charge or add or alter the charge for different offences other than those for which cognizance was taken, the court is not only entitled but is bound to do so.

19. The contention of the petitioner that once cognizance of an offence has been taken, the court cannot frame the charge for a different offence before evidence is taken, is legally untenable.

20. In a recent decision of the Allahabad High Court in *Rajkumar v. State of U.P. and Another* 2023 AHC 210106, it was observed that there are four stages in a criminal proceeding, stage of taking cognizance, the stage of framing of charge, the stage of evidence and the stage of judgment. As the case proceeds from the stage of cognizance to the stage of framing of charge and onwards, the proceedings begin to take shape, the loose ends are tightened, and the approach becomes more and more penetrative. Hence at the time of framing of charge, the court considers more elaborately and delves deeper into the prosecution records. At such a stage of the proceedings, the court's hands cannot be tied with the order taking cognizance as that can affect the fair trial of the case. I am in agreement with the observations in the above judgment.

Since the order framing charge has been carried out in accordance with law, the impugned orders need no interference. Hence there is no merit in this criminal miscellaneous case, and it is dismissed.