

(2011) 08 MP CK 0065

In the Madhya Pradesh High Court

Case No : Criminal Revision No.799/10

Kastoorchand

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 216, 226, 227, 228
Penal Code, 1860 (IPC) — Section 149, 323, 325

Citation : (2011) 3 JLJ 250

Hon'ble Judges : Giriraj Das Saxena, J

Bench : Single Bench

Judgement

G.D. Saxena, J.—This revision petition u/s 397/401 of the Code of Criminal Procedure 1973 preferred by accused/Petitioner is directed against a judgment dated 9th August 2010 rendered in Criminal Appeal No. 41/2009 by the Additional Sessions Judge Chachoda, district Guna, setting aside thereby the judgment of conviction and sentence dated 05th January 2009 recorded in Criminal Case No. 223/2007 by the Judicial Magistrate First Class, Chachoda, district Guna, convicting the Petitioner-accused for commission of offence under Sections 147, 325/149 (on two counts) and 323/149 (four counts and sentencing him to suffer six months" R.I. with fine of Rs. 100/-, three years" R.I. with fine of Rs. 100/-and again six months" R.I. with fine of Rs. 100/-and in default to suffer additional rigorous imprisonments of one month, two months and one month, respectively. By the said impugned judgment while setting aside the conviction and sentence as mentioned herein-before, the case was remitted back to the trial court to frame a further charge on account of causing injuries by the accused-Petitioner to victims, namely, Smt. Savitri Bai and Prem Narayan and decide the case afresh, in accordance with law.

2. Briefly stated facts of the case are that on 28th February 2007 at about 10.00 a.m. in village Lambachak, when Narayan Singh S/o Ghasnshayam Singh went to the field for grazing his cattle, accused Raju came there and man handled him. Narayan Singh went back to his house and complained of accused Brijmohan to

his relations. It is alleged that thereafter the complainant party intervened and pacified the matter. Subsequently, all the accused having armed with weapons reached there and caused injuries to Narayan Singh with Luhangi, Farsa and pelting stones. On raising cry by him, when Prem Narayan, Savitri, Babulal, Daulat Singh rushed to the spot to his rescue, they were also caused injuries by the all accused. Consequently, on the report of the complainant Ghanshyam, an FIR was lodged. The injured were sent for medical examination. On x-ray of injured Prem Narayan, his ribs were found fractured. So also, during x-ray examination of injured Daulatram, fracture of his tibia and fibula bones was noticed. On investigation, the charge-sheet was filed. After trial, the trial court convicted the accused and sentenced them including the Petitioner as mentioned above. On appeal, the appellate court concluded that the charge with regard to the injury on the body of injured Smt. Dhapu Bai was wrongly framed and the accused were wrongly convicted on that count. It is further held that the trial court did not frame the charges for injuries caused to Prem Narayan and Savitri Bai. Succinctly, by setting aside the judgment of trial court, the case was remanded back for framing the charges afresh in relation to the injuries sustained by Smt. Savitri bai and Prem Narayan.

3. The contention of the learned Counsel for the Petitioner/accused is that the impugned judgment passed by the appellate court is manifestly illegal, contrary to law, facts and evidence as adduced before the trial court, therefore, same is liable to be set aside. It is submitted that the trial court without framing the formal charges for the offence u/s 323/149 and 325/149 in regard to the injuries of Prem Narayan and Smt. Savitri Bai, well appreciated the nature of injuries caused to the complainant party and thereafter reached on a conclusion. It is contended that in retrial, the prosecution shall have full opportunity to fill in lacuna in previous statements of the witnesses which would certainly be detrimental to the interests of the accused. Therefore, it is prayed that by allowing the present revision, the impugned judgment of remand passed by appellate court be set aside.

4. Per contra, learned Panel Lawyer for the State/Respondent supported the impugned judgment and contended that by remanding the case, no prejudice appears to have been caused to the Petitioner-accused. According to him, the judgment is based on sound reasonings and requires to be maintained.

5. Heard the learned Counsel for the parties and also perused the record of the trial court and the law applicable to the case.

6. Thus, the sole question that now remains to be answered is whether the framing of further charge by the learned Addl. Sessions Judge after the whole trial was over is without jurisdiction and not warranted by the provisions of the Code.

7. Needless to say that the procedure for commitment under the amended Code of Criminal Procedure makes a departure from the earlier procedure under which

a Magistrate while committing a case to the Sessions was required to frame a charge. But under the present Code, the Magistrate simply commits the case to the Sessions and the Sessions Court proceeds to frame the charges as if it is a Court of original jurisdiction. With regard to the power of the Sessions Court to add an unconnected (charge) or alter a charge prior to the amended Code when an accused is committed with charges framed by the committing Magistrate, there may be some conflict of opinion in the sense that the Sessions Court could or could not exercise any power to withdraw or drop altogether a charge framed by the committing Magistrate. But under the present Code, such a question would not arise as the committal proceedings are now abolished. Thus, the Sessions Court now acts as a Court of original jurisdiction.

8. The contention of the learned Counsel appearing for the Petitioner is that u/s 227 of the new Code of Criminal Procedure., the trial Judge on considering the record and the documents and after hearing both sides has to discharge the accused if there are no sufficient grounds for proceeding against the accused and also give reasons therefore. u/s 228 Code of Criminal Procedure on the material placed before the trial Judge, if there are grounds for presuming that the accused committed the offence, he has to frame a charge or the charges. His argument is that in the instant case the police filed the charge-sheet against the accused-persons including the offences 323, 325 read with Section 149 of I.P.C. There was initially material in the shape of un-cross-examined statements of the prosecution witnesses i.e., Section 161, Code of Criminal Procedure statements before the Magistrate on the basis of which he could have framed a charge for the alleged offence if he presumed that the accused have committed this offence. But such a charge was not framed. It is thus contended that there was an implied discharge of the accused of this offence. It is in this context that the scope of Section 216 Code of Criminal Procedure falls for consideration.

9. At this juncture, it would be relevant to reproduce Section 216 of Code of Criminal Procedure

Section 216. (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 had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded

10. The expression "before judgment is pronounced" occurring in this section is not devoid of significance and meaning. What is contended by the learned Counsel for the Petitioner is that on the same material when once the trial Judge presumes the accused not guilty, he cannot be directed to frame a further charge for the same offence with regard to which the accused stood impliedly discharged. His contention is that a harmonious construction must be placed and that Section 216(1) Code of Criminal Procedure can be availed of to frame a further charge when a new offence not alleged in the charge-sheet not borne out by Section 161, Code of Criminal Procedure statements at the initial stage, is made out by the evidence during the course of trial.

11. This Court is afraid there is not much substance in this contention. Section 216, Code of Criminal Procedure invests a comprehensive power to remedy the defects in framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage, prior to judgment. The combined effect of Sections 226 and 227, Code of Criminal Procedure is to invest the Court with a comprehensive power to remedy the defects in framing or non-framing of the charge whether discovered at the inception of a trial or at any subsequent stage prior to judgment. Thus, the application of Section 216(1), Code of Criminal Procedure cannot be limited for altering or amending a charge only to an offence disclosed by the evidence during trial. On the other hand, even if there is an omission to frame a proper charge at the commencement of the trial which omission is discovered subsequently, the same can be remedied by framing appropriate charge at any time before judgment is pronounced.

12. Further, in the case of *Sabbi Mallesu and Others Vs. State of Andhra Pradesh*, the Hon. Apex court held:

The power of the Court to alter the charges is neither in doubt nor in dispute but in terms of Sub-section (2) of Section 216, Code of Criminal Procedure, it was obligatory on the part of the learned Sessions Judge to bring it to the notice of the accused and explain the same to the accused. The same having not been done, it cannot be said that the requirements of Section 216 of the Code of Criminal Procedure stood complied with.

13. Again in the case of *Kantilal Chandulal Mehta Vs. The State of Maharashtra and Another*, , the Hon. Apex court has held:

As already pointed out the learned Judge of the High Court did not intend nor did he direct a new trial in the sense that it is contended he had done. There was in fact no retrial directed, but only an opportunity was given to the accused to safeguard himself against any prejudice by giving him an opportunity to recall

any witnesses and adduce any evidence on his behalf. The Appellant has also understood the order not as a retrial is clear from ground (f) of the SLP filed before us. The complainant's Advocate Shri Tarkunde in fact said and even now submits before us that he does not want to lead any evidence and would be satisfied on the same evidence to sustain a conviction on the amended charge, nor does the alternative charge now framed requires him to answer a charge against him of a new offence which would cause prejudice.

14. A mere plain reading of Section 216 indicates that at any stage before the judgment is pronounced, the court is empowered to alter or add to any charge. It is a comprehensive section and includes not only the correction of an error in framing the charge but will also include non framing of a charge. Hence even though the charges for offences under Sections are made at initial stages, the court has jurisdiction or power to alter that charge and frame a new charge as it has the power to correct the omission.

15. In present case also, there was initially a charge-sheet submitted against the accused persons including the Petitioner for commission of offence punishable u/s 323 and 325 read with Section 149 of I.P.C. There were also complainant's as well as other prosecution witnesses's statements thereby disclosing prima facie an offence under Sections 323, 325 and 149 of I.P.C., but there was initially an omission of not framing specific charges under Sections 323 and 325 read with Section 149 of I.P.C. with regard to the injuries sustained by Prem Narayan and Smt. Savitri Bai which omission is discovered during the course of hearing by the learned Sessions Judge. Hence, after perusing the evidence recorded by the trial Magistrate and material available on record, the learned Additional Sessions Judge felt the need for framing a further charge for the offences under Sections 323/149 and 325/149 of I.P.C. Though by this itself it cannot be said that the learned Judge had made up his mind to convict the accused, yet it appears to be reasonable that the case has to be tried in the above circumstances by the trial Magistrate.

16. Since, the correction or the omission to frame a charge is permitted by Section 216, Code of Criminal Procedure it cannot be said that the learned Additional Sessions Judge acted without jurisdiction in directing to frame further charge. The order of framing the further charge therefore does not warrant any interference either by exercise of inherent jurisdiction or the revisional jurisdiction.

17. In the light of the aforesaid discussions, this Court is of the view that there are no grounds available for setting aside the order passed by the learned Additional Sessions Judge. Same is hereby affirmed with a direction to the trial court to follow the procedure contemplated u/s 216/217 of Code of Criminal Procedure and decide the case at the earliest possibility, preferably within a period of six months from the date of communication of the order of this Court.

18. With this direction, the revision petition stands disposed of.