

(2000) 06 MAD CK 0042

In the Madras High Court

Case No : Criminal O.P. No. 9421 and 9422 of 2000 and Criminal M.P. No's. 2859 and 2860 of 2000

Selvi J. Jayalalitha

APPELLANT

Vs

Additional Superintendent of Police, CBCID, Chennai

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 227, 228, 273, 313
Penal Code, 1860 (IPC) — Section 109, 120B, 169, 409, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2000) 2 LW(Cri) 631

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : V.A. Bobde, for M/s. N. Jothi, Mr. S. Senthilnathan and Mr. S. Jayakumar, for the Appellant; R. Shanmugasundaram, Public Prosecutor on behalf of the state, for the Respondent

Final Decision : Dismissed

Judgement

B. Akbar Basha Khadiri, J.—Both these Criminal Original Petitions have arisen in this way:-

On the complaint of one Smt. O.P. Susamma, Secretary to the Government, Small Industries Department, a case was registered by the respondent in Crime No. 17 of 1996 on 09.07.1996 and after investigation, a final report was filed against the petitioner herein and others for offences u/s 169 IPC, Section 420 IPC read with Section 109 I.P.C, Section 409 read with Section 109 I.P.C, Section 120B I.P.C. and Section 13(2)read with Section 13(1)(d) of the Prevention of Corruption Act. On the basis-of the final report, the XIII Additional/Special Judge II, Chennai, took the matter on file in CCNos. 4 of 1997 and 13 of 1997. The petitioner preferred batch of revisions to quash the aforesaid charges framed by the learned Special Judge against the petitioner. This Court discharged the petitioner of the charges framed against her. As against the order of discharge, the respondent preferred S.L.P.(CrI.)Nos.475, 476 and 477 of 2000 before the

Supreme Court. In the Supreme Court, the Counsel appearing for the State conceded that offence u/s 420 I.P.C. cannot be charged against the respondent therein/petitioner herein. Therefore, the petitioner herein preferred CrI.M.P.nos.651 of 2000 and 656 of 2000 u/s 216 of the Criminal Procedure Code before the learned Special Judge to alter the charges. The learned Special Judge held that the provisions of Section 216 Cr.P.C. would not apply, in that altering the charge amounts to erasing the substantive charge u/s 420 I.P.C and also erasing the ancillary charge u/s 420 I.P.C. read with Section 109 I.P.C. The learned Special Judge held that alteration would not include deletion or abolition of the charge and accordingly dismissed the petitions.

2. Aggrieved by the orders of the Special Court, the petitioner has come forward with the instant petitions to set aside the orders passed by the learned Special Judge.

3. Heard both the sides. The points that arise in the instant petitions are: (i) whether the alteration of a charge includes deletion also? and (ii) in view of the concession given by the learned Counsel for the State before the Supreme Court whether the charges are to be deleted at this stage?

4. Point No.(i). It would be useful to recall the provisions of Section 216 Cr.P.C. which recites 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:

5. In Black's Law Dictionary, the word "alter" is defined as under: -

Alter. To make a change in; to change some of the elements or ingredients or details without substituting an entirely new thing or destroying the identity of the thing affected. To change partially, to change in one or more respects, but

without destruction of existence or identity of the thing changed to increase or diminish.

6. The Concise Oxford Dictionary of Current English says as under:-

Alter 1 tr. & intr. make or become different; change. 2. tr. US & Austral, castrate or spay, alterable adj. alteration n.

7. In Webster's New Twentieth Century Dictionary, it is stated as under: -

Alter v.t.; altered pt, pp.; altering, ppr. (ML. alterare, to make other from L. alter, other).

1. to change; make different; modify; as snow altered the landscape- age had altered the singer's voice.

2. to castrate (Dial).

3. to re sew parts of (a garment) for a better fit.

8. In P. Ramanadia Aiyar's The Law Lexicon, it is stated as under:-

Alter. To make a change in : to modify; to vary in some degree. See also 8 Bom 200.

The word "alter" has merely to do with some change while maintaining the form, shape or figure. It has the shade of meaning similar to the word "modify" and is opposed to such meanings constituted by such words like "reverse" "annual" or "rescind". Fulo Singh and Others Vs. State,

... ..

Alter, Change, Amend, "This term (alter) is to be distinguished from" its synonyms "change" and "amend". To change may import the substitution of an entirely different thing, while to alter is to operate upon a subject matter which continues objectively the same while modified in some particular. If a cheque is raised, in respect of its amount, it is altered; if a new cheque is put in its place, it is change. To "amend" implies that the modification made in the subject improves it, which is not necessarily the case with an alteration. An amendment always involves an alteration, but an alteration does not always amend. (Block).

9. A plain dictionary meaning of alteration would show that there can be peripheral modification without destroying the identity of the matter.

10. Apart from referring to these dictionary meanings, the learned Counsel for the petitioner cited the decision reported in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala,). Their Lordships of the Supreme Court have referred to Section 291 of the Government of India Act, 1935 and stated as under: -

Here, the word "amendment" has been expanded, it may be that there really is no expansion because every amendment may involve addition, variation or

repeal of part of a provision.

But, that is a case relating to amendment of a statute, namely, the Constitution, where by way of amendment a provision can be repealed. It cannot be said that the sense in which the word "amendment" is used, in that the decision would apply to alteration of a charge now sought for.

11. The learned Counsel for the petitioner referred to various decisions to stress that alteration would include substitution, amendment, variation and repeal, etc. I consider that it is not necessary to refer to those decisions, because we have to find out the purport of usage the word of "alteration" in Section 216 Cr.P.C. in the proper perspective of the object for which the provision is made in the Code of Criminal Procedure.

12. Perusal of Code of Criminal Procedure would show that there is no provision in the Code of Criminal Procedure for deletion of a charge. Though Section 216 Cr.P.C. would give scope for alteration and addition, the only question is whether alteration would also include deletion. According to the learned Counsel for the petitioner, alteration would cover all the other aspects excepting addition which is specifically provided for in the section.

13. The purpose of Section 216 Cr. P. C. is to have such an addition and alteration in furtherance of a trial and not such an addition or alteration which would negate the further trial. Therefore, by no stretch of imagination, it can be said that the alteration would include deletion or erasing of charge which would negate the further trial. Of course, it is left to the accused to prove that certain charge has not been proved. It can be done at the time of the trial by destroying the prosecution witnesses by cross-examination or letting in any defence evidence to nullify the probative value of the prosecution evidence or the accused may even rely on the admission made by the State, but the accused/petitioner herein cannot seek for the deletion of a charge in the guise of alteration which would negate the trial so far as that charge is concerned.

14. Why the word "alteration" u/s 216 Cr.P.C. does not include deletion is answered in *Tapti Bag v. Patitpaban Ghosh* (1993 Cri.L.J. 3932), wherein a single Judge of the Calcutta High Court has pointed out as under: -

The question whether the Court which has already framed a charge under S. 22K, Cr.P.C. can thereafter reconsider the charge and discharge the accused under S. 227, Cr.P.C. has to be examined not in light of provisions of S. 362. Cr.P.C. which deals with only judgment and final order disposing of a case but in the background of the other provisions relevant in this connection

15. Deletion of a charge would indirectly mean discharge. To state an example, if there is a single charge against the petitioner and if deletion of the single charge is allowed, it would virtually amount to discharge of the accused. Question of discharging the accused would arise at the time of framing of charges and not later. In fact in paragraph No. 5 of the decision cited in *Tapati Bag. Vs. Patitpaban*

Ghosh, the Calcutta High Court has pointed out as under:-

5. The learned Advocate for the petitioner attracted my attention to the provisions of S.216, Cr.P.C. and argued that the said section empowers any Court to alter or add to any charge at any time before judgment is pronounced and this gives an implied power to discharge an accused at any state...

Then after referring to Section 216 Cr.P.C. the Calcutta High Court has observed as under:-

A plain reading of the said section would show that the alteration or addition referred to therein contemplates modification of or addition to charge but not discharging an accused in respect of a charge already framed so as to bring the trial itself to an end in respect of such accused. There may be addition of a new charge or even substitution of a charge in an appropriate case but S.216 does not contemplate discharge of an accused or the termination of the trial in respect of any accused. Sub-section (2) requires that every alteration or addition to a charge has to be read and explained to the accused. The question of reading and explaining such alteration or addition would be meaningless in a good number of cases if discharge is contemplated by such alteration or addition. Sub-secs.(3) and (4) speak of proceeding with the trial or of directing a new trial or adjourning the trial. This also is a clear indication that any alteration or addition to charge shall not be of such nature as to get the accused discharge and bring the trial to an end in respect of that accused. Sub-sec. (5) requires that where 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 on the same facts. Here also the sub-section contemplates of proceeding with the trial with fresh sanction, if necessary, and not ending the trial in respect of any accused by any obliteration of the charge. It is therefore evident that S. 216 does not empower the Court to discharge an accused and bring the trial itself to an end in respect of an accused against whom a charge has already been framed, without following the procedure prescribed in the Code regarding the trial of a case. Of course there are certain independent provisions prescribed in the Code itself which when brought into play in any particular case may result in ending the trial at an intermediate stage, as for example, where the prosecution is withdrawn with the consent of the Court under S. 321 or when an offence is validly compounded during trial under S. 320, but S.227 being designed for a particular stage of the judicial proceeding one cannot revert to that position when that stage has already been crossed. I am therefore clearly of the opinion that the Court of Session has no power to discharge an accused under S. 227 once a charge under S. 228 has already been framed. The learned Additional Sessions Judge was, therefore, clearly in error in discharging the accused opposite party under S. 227, Cr.P.C. by his impugned order dated the 20th November, 1990 after charge had already been framed against the accused under S. 228, Cr.P.C. at any earlier stage....

16. The learned Public Prosecutor drew my attention to some pronouncements of the Supreme Court in this regard. In *Radial Bhanji vs. State of Maharashtra* (AIR 1979 SC 94), the Apex Court has held that once a charge is framed, the Magistrate has no power u/s 227 Cr.P.C. or by any other provision of the Code to cancel the charge and revise the proceeding to the stage or Section 273 Cr.P.C. to discharge the accused. What has been stated regarding a warrant trial holds good for a sessions trial also. It is thus evident that once a charge is framed, the natural course is to proceed with the trial and pronouncement of judgment either holding that the accused guilty or acquitting him if he is not guilty. But, after framing a charge, the Court cannot discharge the accused. That is why, the deletion is not included in Section 216 Cr.P.C.

17. The learned Counsel for the petitioner drew my attention to the decision reported in *Dwarka Lal vs. Mahadeo Rai and Others* (1890 12 All 551) wherein a single Judge of the Allahabad High Court has referred to the act of Sessions Judge, who suo motu framed certain charges and at the time of the trial suo motu withdrew them. The learned Judge has observed "I think the word alter in Section 227 Cr.P.C. (old Provision) must be taken to include withdraw ". With due reverence to the learned single Judge. I could not persuade my self to subscribe my assent to that finding. I respectfully disagree with the learned single Judge.

18. Point No.(ii): Let us consider the next aspect. It is not in dispute that the State has conceded before the Apex Court that the petitioner herein cannot be charged u/s 420 I.P.C. The Apex Court has passed the following order:-

when we heard Shri. Shanti Bhushan learned Senior Counsel for the State of Tamil Nadu on 18.04.2000, he frankly conceded that the offence u/s 420 of the Indian Penal Code cannot be charged against the respondent on the facts of this case. However, the learned Senior Counsel addressed detailed arguments regarding sustainability of the other offences included in the charge framed against the respondent and seriously attacked the reasons of the learned single Judge of the Madras High Court in the impugned order. Shri Sushil Kumar, learned Senior Counsel who argued for the respondent defended the order. We are told that the impugned order was passed by the High Court when the trial Court has reached almost the final stage of prosecution evidence as only a few more witnesses remained to be examined. When we expressed to Shri Sushil Kumar that it was not proper for the single Judge to have expressed final opinion on the merits of the legal interpretations regarding the points raised, when the trial has reached such a stage, learned Senior Counsel wanted time to get instructions as to whether the petitions filed by the respondent to discharge the accused can be withdrawn without prejudice to her rights to raise all the contentions in the trial court afresh. We granted time till today.

Learned Counsel for the respondent now seeks permission to withdraw the criminal revision petitions filed in the High Court (Crl. Revision Complainant Nos.406/1998, 606/1999 and 930/1999) without prejudice to her rights to raise all the contentions in the trial court afresh. In fact an application has been filed

on behalf of the respondent seeking permission to withdraw, unconditionally. Criminal Revision Petitions numbered as above filed before the High Court at Madras. That application will be on record. We order that the above revision petitions filed in the High Court would stand dismissed as withdrawn. However, we permit the respondent to raise all contentions which she thinks necessary before the trial court at the final stage. We, therefore declare that the impugned common Judgment dated 18.1.2000 passed by the High Court of Madras will stand erased. If the trial court is to decide any questions which have been dealt with in the impugned Judgment the same shall be decided as though the High Court has not pronounced any opinion on such question thus far. The trial court will now proceed to conclude the trial and dispose of in accordance with law as expeditiously as possible. These appeals are disposed of accordingly.

It should be pointed out that the State has not made the concession before the charge is framed or immediately after the charge is framed. After examination of most of the witnesses and after assessing the evidence of its own accord, the State has submitted to the Court that charge u/s 420 I.P.C. cannot be made up. This is only a subjective approach. At the time when charge was framed, the learned Special Judge was satisfied that prima facie evidence is available, and he had framed the charges and proceeded to examine the witnesses. After framing of charge, if the petitioner questions the propriety of charges, she has to prefer revision. Indeed, she had preferred revisions, succeeded in the revisions, but on further appeal to the Apex Court by the State, she had withdrawn all the revision petitions without prejudice to her right to raise all contentions in the trial court afresh.

19. Whether deletion of charge can be agitated afresh in the trial Court pending trial is the next question that arises. The Apex Court has stated in the order that "however, we permit the respondent to raise all contentions which she thinks necessary before the trial court at the final stage"... The next question is whether the final stage has arrived. In the instant case, it is admitted that all the prosecution witnesses have been examined and the petitioner as accused has been questioned u/s 313 Cr.P.C. It cannot be said that this is the stage where the petitioner can seek for alteration of charge. The final stage has not been reached.

20. I am of the view that the alteration referred to in Section 216 Cr.P.C. does not include deletion which would virtually amount to discharge. The learned Special Judge has no power to discharge an accused after framing of the charges. The natural course is to proceed with the trial and it is for the petitioner to put forth before the trial Court at the time of the arguments about the concession made by the State.

21. In the result, both the CrI.O.Ps. are dismissed and consequently, the CrI.MPs. are also dismissed.