
(2008) 07 RAJ CK 0022

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 1112 of 2007

Shri Narain and Others

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 04-07-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2008) 07 RAJ CK 0022

Hon'ble Judges : Satya Prakash Pathak, J

Bench : Single Bench

Advocate : Suresh Dhenwal, for the Appellant; Nirmala Sharma, PP, for the State and Mr. Kapil Sharma with Mr. Vikram Singh, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Pathak, J.—This revision petition has been filed u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 against the order dated 7th September, 2007 passed by the learned Additional Sessions Judge (Fast Track), Hindauncity District Karauli by which on an application filed by the complainant u/s 216 Cr.P.C. the charge has been altered and framed u/s 302 IPC.

2. It has been contended by the learned counsel for the petitioners that charge-sheet in this case was filed u/s 306 IPC, therefore, in the absence of material, the charge has been altered and framed u/s 302 IPC. It has also been contended that on previous occasion, no charge was framed u/s 302 IPC after filing charge-sheet u/s 306 IPC and at that point of time complaint and accused both preferred revision petitions before the Hon'ble High Court and the Hon'ble High Court dismissed both the revision petitions as the same were not pressed. Learned counsel has read before me the statement of Hargyan to show that the story of the prosecution is doubtful and the facts of the case and evidence recorded by the court would indicate that the order for framing charge u/s 302 IPC is liable to be set aside.

3. Learned Public Prosecutor and the learned counsel for the complainant have opposed the submissions made by the learned counsel for the petitioner.

4. After having considered the submissions made by the learned counsel for the parties, what I find is that this court while dismissing two revision petitions preferred i.e. S.B.Criminal Revision Petition No. 1179/2005 - Ram Bharosi@Bharosi Vs. State of Rajasthan & another and S.B.Criminal Revision Petition No.1216/2005-Kailash Vs. State of Rajasthan & another, has observed that since both the learned counsel for the parties submitted that they do not want to press the revision petitions, as such they were liable to be dismissed with the liberty to the complainant to move application u/s 216 Cr.P.C. at the relevant point of time. A certified copy of the order has been filed which shows that the complainant was given liberty to move application u/s 216 Cr.P.C. before the learned trial court at appropriate time. The contention of the learned counsel for the petitioner that since the matters were earlier agitated and the revision petitions were dismissed, the trial court has illegally passed the order to frame charge u/s 302IPC, on the application of complainant made u/s 216 Cr.P.C. has no substance.

5. As regards the contention of the learned counsel that the case would not traverse beyond section 306 IPC is concerned, is too early to make comment on that but suffice it to say that the complainant-non-petitioner lodged a first information report No.216/2005 in the concerned police station for the offence under sections 147,148,149, 341 and 302 IPC and it is after investigation that the charge-sheet was filed u/s 306 IPC and the grievance of the complainant was that charge sheet was required to be filed u/s 302 IPC instead of Section 306 IPC and revision petition before this court was filed which was dismissed by this court with the liberty to the complainant to move application u/s 216 Cr.P.C. at the appropriate stage. It does appear from the perusal of the impugned order and the allegations made in the FIR that on account of the alleged incident, one person has died. As regards evidence part and the statements recorded by the trial court are concerned, it appears from the perusal of the impugned order that the statement of 8 witnesses have been recorded and one of the eye witness has stated about the manner in which accused in this case gave severe beatings to the deceased. Learned trial court prima facie found that the charge was required to be altered, therefore, ordered to frame charge u/s 302 IPC- In my opinion, the trial court has considered the evidence and the material available on record properly.

6. A perusal of section 216 Cr.P.C. would indicate that the court can at any point of time on finding that the material available on record requires alteration of the charge can pass appropriate order. In the instant case, when liberty was granted by this court in the revision petition to the complainant to move application u/s 216 Cr.P.C. at appropriate stage, then on moving an application by the complainant, the learned trial court after considering the material has passed the impugned order. I do not find any error in the impugned order and the revision

petition appears to be devoid of merit.
The revision petition stands dismissed.