
(1973) 07 GUJ CK 0011
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Patel Manu Ranchhod and Others

RESPONDENT

Date of Decision : 11-07-1973

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 307, 323, 326, 395

Citation : (1974) 15 GLR 235

Hon'ble Judges : A.A. Dave, J

Bench : Single Bench

Judgement

A.A. Dave, J.—This revision application has been preferred by the State against the order dated 2nd April 1973, Ex. 1 passed by the learned Sessions Judge, Bulsar at Navsari in sessions case No. 42 of 1972 whereby original charge framed against accused Nos. 1 and 2 under Sections 395, 397 and 307, I.P.C. and under Sections 395 and 323, I.P.C. against rest of the accused was changed to Section 326. I.P.C. against accused No. 1 and u/s 323, I.P.C. against accused Nos. 2,3,4 and 5. No charge was framed against accused Nos. 6,7 and 8.

2. Mr. A.H. Thakar, learned Assistant Government Pleader who appeared on behalf of the State, urged that the interpretation put by the learned Sessions Judge on the decision of this Court in the case of State of Gujarat Vs. Mahmad Kasam and Another, is absolutely erroneous. He urged that no doubt, the Sessions Judge has power to add or alter to the charge framed by a Magistrate while committing the accused to the court of sessions. But, he has no power whatsoever to alter the charge in such a manner so as to quash the charge framed against the accused. In the instant case, he urged that, even though all the accused were charged u/s 395, I.P.C., the learned Sessions Judge did not frame this charge against them at all and merely charged accused No. 1 u/s 326, I.P.C; and accused Nos. 2, 3, 4 and 5 u/s 323. I.P.C. and did not frame any charge against the rest of the accused which is clearly erroneous.

3. I entirely agree with the submissions made by the learned Assistant Government Pleader. In the case of State of Gujarat v. Mahmad Kasam and Anr.

referred to earlier, the Division Bench of this High Court made the following observations:

It is undoubtedly true that in a sense, alteration of the charge from one offence to another would involve in the process extinction of the charge for the old offence and framing of a charge for the new offence, but that power is expressly conferred on the Court of Session u/s 226 if the conditions set out in the section are satisfied and we do not, therefore, see why we should refuse to concede such power to the Court of Session merely on the ground that the effect of recognising such power would be to empower the Court of Session to quash the charge. The Court of Session indubitably cannot quash the charge when the accused is committed to it for trial, but it can certainly frame a new charge or add to or otherwise alter the charge as provided expressly in Section 226.

4. with respect, I am in entire agreement with the above observations. However, it may be noted that these observations were made by the Division Bench in the light of the special facts of that case. In that case, even though a charge sheet was submitted against the accused u/s 302, I.P.C. read with Section 34, I.P.C, the learned Magistrate had committed the accused to the Court of Sessions to stand their trial for offence u/s 304-11, I.P.C. On an application given by the Public Prosecutor, the charge was amended by the Sessions Court and the accused were charged for the offences u/s 302 read with Section 34, I.P.C. Against that order, a revision application was preferred to this Court and the division bench made the above observations. It is true, as observed by this Court, that the Sessions Judge has a power u/s 226 of the Code to amend, alter or add to the charge, under which the accused is committed to the Court of Sessions. It may happen that the original charge may be extinguished when a new charge is framed by the Court of Sessions. But that would not mean that when the accused have been committed to the Court of Sessions for standing their trial for the offences u/s 395, 397 and 307, I.P.C, it would be open to the Sessions Court to ignore these charges altogether and frame a charge u/s 326, I.P.C. against accused No. 1 only and u/s 323, I.P.C against accused Nos. 2, 3, 4 and 5 only and not frame any charge against rest of the accused. This order of the learned Sessions Judge amount to quashing of the order of commitment made by the learned Magistrate against "the accused Nos. 6, 7 and 8 which is not permissible to the learned Sessions Judge at all. In fact, framing of the charge under Sections 326 and 323, I.P.C. simpliciter against accused No. 1 and accused Nos. 2 to 5 respectively also amounts to quashing of the charge against them under Sections 395 and 397 which is also not permissible to the Sessions Court. In the case before this High Court, even though the charge-sheet was submitted against the accused u/s 302, I.P.C. the learned Magistrate thought it fit to commit them for an offence u/s 304-11, I.P.C. The learned Sessions Judge, therefore, from the papers, charged them u/s 302, I.P.C. read with Section 34, I.P.C. In the context of these facts the High Court was of the view that it was within the power of the Sessions Judge to alter, amend or add to the charge framed by the learned Magistrate. It does not mean and it could never be meant

that it was open to the learned Sessions Judge to ignore the charge for higher offence and to frame a charge which would virtually amount to quashing of the order of commitment against the accused. If the learned Sessions Judge thought that there was no material whatsoever to frame a charge against the accused under Sections 395 and 397, I.P.C, he could have referred the matter to this Court for quashing the order of commitment under these charges. It should be remembered that the charge under Sections 395 and 397, I.P.C. denote that there were more than 5 accused persons who were charged with having committed dacoity and while committing dacoity, one of them was alleged to have used a deadly weapon. The manner in which the learned Sessions Judge has exercised his jurisdiction u/s 226 of the Code would indicate that he has abused his powers. He has misread and misappropriated the decision of this Court in the case of *State of Gujarat v. Mahmad Kasam* (supra). It seems, with respect to the learned Sessions Judge, that he has not tried to refer to the facts of the said case while applying the ratio of that case to the case before him. The Division Bench had placed reliance on the Bombay decision reported in 47 B.L.R. 995 wherein also when the accused were committed on a charge against accused No. 2 of murder u/s 302, I.P.C, and against accused Nos. 1 and 4 under Sections 323 and 109, I.P.C, it was held that it was competent to the Clerk of the Crown u/s 226 of the Code to alter the second charge into one under Sections 302 and 109, I.P.C, for aiding and abetting accused No. 2 to commit murder. The power to add to or alter the charge conferred by Section 226 of the Code cannot be used in doing away with the main charge involving higher offence and framing a new charge which would clearly amount to quashing of the commitment under the higher charge. In my opinion, the charge framed by the learned Sessions Judge is absolutely erroneous and is not prima facie warranted from the papers on record.

5. In the result, the revision application succeeds. The charge framed by the Sessions Judge is hereby set aside and the original charge under which the accused were committed to the Court of Sessions is restored. The learned Sessions Judge is directed to frame a charge as per the order of commitment made by the learned Magistrate and proceed further according to law.