
Bhim Dassi And Others Vs State Of Himachal Pradesh And Others

Criminal Miscellaneous Petition (Main) No.698 Of 2019

Court: High Court Of Himachal Pradesh

Date of Decision: Aug. 16, 2021

Acts Referred:

Indian Penal Code, 1860 " Section 34, 323, 325, 341, 504#Code Of Criminal Procedure, 1973 " Section 216, 313, 482

Hon'ble Judges: Anoop Chitkara, J

Bench: Single Bench

Advocate: Romesh Verma, Nand Lal Thakur, Kunal Thakur, Ram Lal Thakur

Final Decision: Dismissed

Judgement

Anoop Chitkara, J

1. Challenging the alteration of charge by the learned Trial Court by adding Section 325, IPC and consequently framing an additional charge, the

accused-petitioner has come up before this Court under Section 482, Code of Criminal Procedure, 1973.

2. A perusal of the order-sheet annexed with the petition reveals that initially the State had launched prosecution for commission of offences

punishable under Sections 341, 323, 504 read with Section 34, IPC. The charges were framed under these Sections and the trial commenced.

3. A perusal of the order dated 1.10.2018 reveals that the prosecution evidence was completed and even the statement of accused under Section 313,

Cr.PC was recorded wherein they declined to lead the defence evidence. After that, the matter was adjourned on the request of the parties and also

that a cross case was pending and it was ordered that the said cross case be also tagged with the present case. Order dated 31.7.2019 reveals that

the matter was heard in part by the learned JMFC, Anni, District Kullu.

4. On 29.8.2019, the learned Trial Court passed the following order:-

“While perusing the case file for conclusion of the arguments, it was observed that there is one documentary evidence issued by Dr. Ashish Kalra,

Kalra Hospital Jalandher City, perusal of which shows that grievous injuries were also sustained by the victim and therefore, by invoking power under

Section 216, Cr.P.C, a prima facie case is made out against the accused persons to frame additional charge against them for commission of the

offence punishable under Section 325 read with Section 34 of IPC. Accordingly, charge framed against the accused persons for the aforesaid offence,

to which they pleaded not guilty and claimed trial.

Let the witness namely Dr. Ashish Kalra, M.D. be summoned from Kalra Hospital, Kapurthala Chowk, Jalandhar City for 23.11.2019”

5. Consequent upon this order, learned Trial Court framed additional charge for commission of offences punishable under Section 325, IPC against the

accused.

6. Aggrieved by the order passed under Section 216, Cr.PC and additional charge framed for commission of offence punishable under Section 325,

IPC, the petitioner came up before this Court.

7. Initially the trial was going on in the Court of Judicial Magistrate First Class for the commission of offences punishable under Sections 341, 323, 504

read with Section 34, IPC. With the alteration of charges, Section 325, IPC was added, which is also triable by any Magistrate of the First Class.

Thus, the accused cannot be said to be prejudiced on the grounds that the jurisdiction of the learned Trial Court had changed conferring jurisdiction to

Higher Court depriving one right of Criminal Revision Petition in case of a conviction. The ground that the report issued by a private hospital cannot be

considered at such a belated stage is ill-founded. A perusal of Section 216, Cr.PC clearly reveals that a Trial Court may at any stage before

pronouncement of judgment can alter the charge. Learned counsel has relied upon the following judicial precedents, however, the same are not

applicable on the facts peculiar to this case:

(1) AIR 1954 SCC 266 (Para-9)

(2) 2013 (7) SCC 256 (Para-15)

(3) 2014 (3) SCC 92 (Para -58)

(4) 2017 (7) SCC 706 (Para 9 to 16)

(5) AIR 1943 Privy Council Page 192 (Page 195-g & h)

8. In the entirety of facts and circumstances peculiar to this case, the petition is dismissed. Registry is directed to return the records forthwith. All

pending application(s), if any, shall stand disposed of accordingly.