

(2002) 08 AHC CK 0194

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 7032 of 2002

Vibhuti Narayan Chaubey alias
Lala Chaubey and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Aug. 7, 2002**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 216, 224
- Penal Code, 1860 (IPC) - Section 307, 324, 34

Citation: (2003) CriLJ 196**Hon'ble Judges:** B.K. Rathi, J**Bench:** Single Bench**Advocate:** Vinod Prasad, for the Appellant; A.G.A., for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

B.K. Rathi, J.

The applicants are accused in S.T. No. 74 of 2001 pending in the Court of Additional Sessions Judge, Court No. 15, Varanasi. In this case the charges for offences under Sections 323 34 30734 504 506, I.P.C. were framed on 16-7-2001. Thereafter the statement of PW 1, Rajendra Prasad was recorded. The applicants then moved an application to alter the charge u/s 307/34. I.P.C. to 324/34 I.P.C. on the basis of his statement. The application has been rejected by the impugned order dated 6-7-2002. Aggrieved by it, the present petition has been filed.

2. Learned counsel for the applicant has relied on Clause (1) of Section 216, Cr.P.C. of which is as follows :

"Any Court may alter or added to any charge at any time before judgment is pronounced."

However, this clause does not provide for deletion of the charge and the charge for offence u/s 307/34, I.P.C. cannot be deleted. The word "delete" has intentionally been not used by the legislature.

3. However, learned counsel for the appellants, Sri Vinod Prasad has argued that this request is for alteration of the charge and not for deletion of any charge. The argument is totally misleading and perverse. The charge framed u/s 307 34, I.P.C. can not be struck off and in its place charge u/s 324 34, I.P.C. cannot be substituted. The real request, therefore, is to delete the charge u/s 307 34, I.P.C. and to frame the charge u/s 324 34, I.P.C. The application is therefore, not for alteration of the charge.

4. What is alteration of charge can be explained by one example. If the charge is framed with the help of Section 34, I.P.C. the charge may be altered as simpliciter. The word alteration has not been used in the above Section and therefore, the charge once framed cannot be deleted. This will also appear from the perusal of the provisions of Section 224, Cr.P.C. which provides for withdrawal of the remaining charges on conviction on some of the charges where the charges are for more than one heads. Therefore, once the charge is framed the case will result, either in acquittal or in conviction in accordance with the provisions of trials prescribed under the Chapters 18, 19 and 20 of the Cr.P.C. The charge can be withdrawn u/s 224, Cr.P.C. only after judgment and it cannot be deleted.

5. Sri Vinod Prasad, learned counsel for the applicant has also referred to the decision of the Apex Court in [Sohan Lal and others Vs. State of Rajasthan](#), This case is mainly on Section 319, Cr.P.C. Regarding Section 219, Cr.P.C. the only observation is that "add to any charge means the addition of a new charge.

An alteration of a charge means hanging or variation of an existing charge or making of a different charge." This decision is of no help to the applicants and does not provide for deletion of charge.

6. The petition is totally misconceived. The application was rightly rejected.

7. The petition is dismissed.