

Harveer Singh and Others Vs State of M.P.

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Nov. 25, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 216, 216(1), 216(2), 397, 401
Penal Code, 1860 (IPC) â€” Section 148, 149, 294, 324, 325

Citation: (2012) ILR (MP) 604 : (2012) 2 MPHT 211

Hon'ble Judges: G.D. Saxena, J

Bench: Single Bench

Advocate: Deependra Raghuvanshi, for the Appellant; Pramod Pachori, Public Prosecutor/State, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

G.D. Saxena, J.

This revision petition u/s 397/401 of the Code of Criminal Procedure 1973 preferred by the accused/petitioners is

directed against an order dated 29th June 2011 in Criminal Case No. 742/07 passed by the Judicial Magistrate First Class, Kolaras, district

Shivpuri (M.P.), framing thereby charges against the accused for commission of offence punishable under Sections 324/149, 326/149, 148 and

294 of I.P.C. The brief facts for decision of this revision petition are that on 16th May 2007 at about 8.00 a.m. on the way in front of the house of

the complainant Ram Sewak at village Vinnaya of Police Station Indar, all the accused having armed with Lathis and Farsas reached on the spot

where the complainant Ram Sewak and his brother Rajaram were present and due to previous enmity hurdled abuses to them. When the

complainant and his brother tried to raise objection, all the accused caused injuries by means of Lathis, Axe and Farsas on the different parts of

their bodies. Seeing the incident, Imarat Singh rushed to the spot but he was also beaten by the accused-persons. On the report of the

complainant, an FIR was lodged. Thereafter, the police sent the injured for their medical examination. Except injured Imarat Singh, the injuries on

the persons of Ram Sewak and Raja Ram were found to be simple in nature. As per X-ray report, the injury sustained by Imarat Singh on left

hand, resulted in fracture of the distal phalanx of little finger with absence of distal fragment. During trial, the learned Trial Judge by exercising the

powers u/s 216 of the Code, altered and added the charge for commission of offence u/s 326/149 of I.P.C.

2. The contention of the learned counsel appearing for the petitioners/ accused is that the impugned order passed is against the settled principles of

law and without jurisdiction, hence, same is liable to be set aside. It is contended that the trial Magistrate committed the error by amending the

charge at the far end of trial. Despite the X-ray report of the injured Imarat Singh being made available by the Investigation at the time of framing

the charge by the trial court, the trial Magistrate did not opt to frame the charges at earlier stage. On the basis of the aforesaid submissions, it is

prayed that by allowing the revision, the order of the trial Magistrate for alteration of charge to one u/s 326/149 I.P.C. be set aside.

3. The learned Public Prosecutor for the respondent/State on the other hand, opposed the prayer and prayed for dismissal of the revision being

found no substance in it.

4. Heard the learned counsel for the parties and also perused the copies of charge-sheet and court statements of the prosecution witnesses filed

alongwith the revision and the law on the point involved.

5. Thus, the sole question that now remains to be answered is whether alteration of charge by the learned Judicial Magistrate after examination of

the prosecution witnesses was over is without jurisdiction and not warranted by the provisions of the Code ? It is in this context that the scope of

Section 216 Cr.P.C. falls for consideration.

6. At this juncture, it would be relevant to reproduce Section 216 of Cr.P.C.

S. 216. (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 had been already obtained for a prosecution on the same facts as those on which

the altered or added charge is founded

7. The provisions of Section 216, Cr.P.C. invest a comprehensive power to remedy the defects in framing or non-framing of a charge, whether

discovered at the initial stage of the trial or at any subsequent stage, prior to judgment. Thus, the application of Section 216 (1), Cr.P.C. cannot be

limited for altering or amending a charge only to an offence disclosed by the evidence during trial. On the other hand, even if there is an omission to

frame a proper charge at the commencement of the trial which omission is discovered subsequently, the same can be remedied by framing

appropriate charge at any time before judgment is pronounced.

7. Further, in the case of Sabbi Mallesu and Others Vs. State of Andhra Pradesh, , the Hon. Apex court held:-

The power of the Court to alter the charges is neither in doubt nor in dispute but in terms of Sub-section (2) of Section 216, Cr.P.C., it was

obligatory on the part of the learned Sessions Judge to bring it to the notice of the accused and explain the same to the accused. The same having

not been done, it cannot be said that the requirements of Section 216 of the Criminal Procedure Code stood complied with.

9. Again, in the case of Kantilal Chandulal Mehta Vs. The State of Maharashtra and Another, the Hon. Apex court has held :-

As already pointed out the learned Judge of the High Court did not intend nor did he direct a new trial in the sense that it is contended he had

done. There was in fact no retrial directed, but only an opportunity was given to the accused to safeguard himself against any prejudice by giving

him an opportunity to recall any witnesses and adduce any evidence on his behalf. The appellant has also understood the order not as a retrial is

clear from ground (f) of the SLP filed before us. The complainant's Advocate Shri Tarkunde in fact said and even now submits before us that he

does not want to lead any evidence and would be satisfied on the same evidence to sustain a conviction on the amended charge, nor does the

alternative charge now framed requires him to answer a charge against him of a new offence which would cause prejudice.

10. A mere plain reading of Section 216 indicates that at any stage before the judgment is pronounced, the court is empowered to alter or add to

any charge. It is a comprehensive section and includes not only the correction of an error in framing the charge but will also include non-framing of

a charge. Hence even though the charges for offences under Sections are made at initial stages, the court has jurisdiction or power to alter that

charge and frame a new charge as it has the power to correct the omission.

11. In present case also, on consideration of the court statements of complainant, injured witnesses of the incident, Dr. R.R. Mathur, Dr. M.L.

Agrawal, FIR, case diary statements, medical reports available on record of the court of the trial Magistrate, same would clearly indicate that there

are grounds available to alter the charges as framed in earlier stage by the trial Magistrate. There were also complainant's as well as other

prosecution witnesses's statements thereby disclosing prima facie an offence u/s 326 of I.P.C. but there was initially an omission of not framing the

specific charge u/s 326/149 of I.P.C. with regard to the injuries sustained by Imarat Singh which omission is subsequently discovered during the

course of hearing by the learned Magistrate. Hence, after perusing the evidence recorded by the trial Magistrate and material available on record,

the learned Judge felt the need for alteration of a charge for the offence under Sections 326/149 instead of 325/149 of I.P.C. Though by this itself

it cannot be said that the learned Judge had made up his mind to convict the accused, yet it appears to be reasonable that the case has to be tried

in the above circumstances by the trial Magistrate.

12. Since, the correction or the omission to frame a charge is permitted by Section 216, Cr.P.C., it cannot be said that the learned trial Judge

acted without jurisdiction in directing to alter charge. The order of altering the charge therefore does not warrant any interference either by exercise

of inherent jurisdiction or the revisional jurisdiction.

13. In the light of the aforesaid discussions, this court is of the view that there are no grounds available for setting aside the order passed by the

learned trial court. Same hereby stands affirmed. Resultantly, the revision fails and is hereby dismissed.