

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL. M.C. 4095/2018 & CRL. M.A. 29947/2018

Reserved on : 31.01.2020

Pronounced on : 06.02 .2020

IN THE MATTER OF:

MAHENDER SINGH

..... Petitioner

Through: Mr. Vivek Sood, Sr. Adv. with Ms. Saumya Gupta and Mr. Siddharth Gupta, Advs.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Amit Chadha, APP with SI Prem Kumar.
Mr. Dipanshu Chugh, Adv. for R-2 to R-4.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

1. The present petition has been directed against the order dated 24.07.2018 vide which the trial court has dismissed the petitioner/complainant's application seeking clarification with respect to addition of charge under Section 304 Part I IPC besides the charge for the offence punishable under Section 498A/34 IPC and Section 304B/34 IPC.
2. Learned Senior Counsel for the petitioner submitted that the impugned order came to be passed in application filed on behalf of the State under Section 216 Cr.P.C. seeking clarification and for framing of additional charge under Section 302/34 IPC.
3. Briefly, the facts necessary for the disposal of the present case, are

that the petitioner is the father of the deceased. The deceased got married to Ravinder Singh/Respondent no.2 on 21.02.2008. An information vide DD No. 97-B was received on 24.09.2010 regarding the death of the deceased in Safdurjung Hospital. After investigation, a charge-sheet was filed against the respondents under Sections 498A/304B/406 IPC.

4. The trial court vide order dated 21.01.2013, framed charge against Ravinder Singh/respondent no.2 for the offence punishable under Section 498A/304 Part I IPC. On receiving supplementary challan, similar charge was framed on 12.09.2013 against Mahender Singh/Respondent no.3 (father-in-law) and Harbans Kaur/Respondent no. 4 (mother-in-law).

5. Aggrieved with non-framing of charge under Section 304B IPC as well as Section 406 IPC, the petitioner approached this Court in Crl. Rev. P. 578/2013. While disposing of the above petition vide order dated 13.10.2014 and noting, the demand of dowry; death of the victim in unnatural circumstances within seven years of marriage and the opinion in the post-mortem report stating cause of death as uterine rupture because of intrusion/manipulation of foreign object, the Court came to the opinion that the impugned order discharging the accused persons under Section 304B IPC suffered from infirmity and the same was set aside. The trial court was directed to frame charge under Sections 304B/34 IPC against all the respondents. The Court also noted that neither arguments were addressed nor any evidence was collected by the Investigating Agency with respect to offence under Section 406 IPC.

6. Learned Senior Counsel for the petitioner has submitted that the trial court misinterpreted the aforesaid order dated 13.10.2014 and vide its order dated 14.11.2014, modified the order on charge and framed charge for the

offence punishable under Sections 498A/34 IPC and 304B/34 IPC against the respondents.

7. Learned Senior Counsel for the petitioner submitted that there was no ambiguity in the order dated 13.10.2014 passed by this Court and the trial court ought to have framed additional charge under Section 304B/34 IPC instead of replacing charge under Section 304 Part I IPC with the charge under Section 304B IPC.

8. Learned counsel for the respondents has supported the impugned order and submitted that the trial is pending at the stage of final arguments and the present petition is nothing but an attempt to delay the trial by the complainant.

9. I have heard the learned counsels for the parties and gone through the case record.

10. The deceased got married to respondent no.2 on 21.02.2008. The witnesses have deposed about the allegations with respect to dowry demand. The death has taken place within three years of marriage. The doctor who conducted the post-mortem of the deceased has opined that the death was due to haemorrhagic shock consequent upon uterine rupture. By subsequent opinion, he opined that the rupture of uterus was suggestive of being the damage caused by introduction and manipulation of foreign object/instrument in the uterus.

11. Section 216 Cr.P.C. reads as under :-

“216. Court may alter charge.

(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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

12. The trial in the present case is still pending at the stage of final arguments which are yet to be advanced. Section 216 Cr.P.C. provides the Trial Court an exclusive and wide-ranging power to change or alter any charge. Sub-Section (1) provides that the Court can alter or add any charge at any time before a judgment is pronounced. In P.Kartikalakshmi v. Sri Ganesh reported as **(2017) 3 SCC 347**, the Supreme Court held as under:-

“Section 216 Cr.P.C. empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the

Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C. to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

13. The test to be adopted by the Court while deciding upon an addition or alteration of charge is that the material brought on record during the course of trial needs to have a direct link or nexus with the ingredients of alleged offence. [Refer: Anant Prakash Sinha v. State of Haryana reported as **(2016) 6 SCC 105** and Dr. Nallapareddy Sridhar Reddy v. The State of Andhra Pradesh & Ors. reported as **2020 SCC OnLine SC 60**]

14. Another aspect to be kept in mind while exercising powers under Section 216 Cr.P.C. is to see that no prejudice is caused to the accused. It is the duty of the Court to ensure that no prejudice is caused to the accused and he is allowed to have a fair trial. Sub-Section (3) of Section 216 Cr.P.C. provides that the Court may proceed with the trial as if the additional or alternative charge is the original charge, if such alteration or addition does not cause prejudice to the accused. Sub-Section (4) provides that the Court can either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused in case of addition or alteration of charge. In Anant Prakash Sinha (Supra), the

Supreme Court held that:

“19. In addition to what we have stated hereinabove, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 Cr.P.C.. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial..”

To the similar effect is the decision in CBI v. Karimullah Osan Khan reported as **(2014) 11 SCC 538**.

15. In Rajbir @ Raju & Anr. v. State of Haryana reported as **(2010) 15 SCC 116**, the Supreme Court, while taking a serious view of crime against women, directed all the trial courts to ordinarily add Section 302 IPC to the charge of Section 304B IPC. However, later in Jasvinder Saini & Ors. v. State (Government of NCT of Delhi) reported as **(2013) 7 SCC 256**, the Supreme Court has clarified that the charge under Section 302 IPC should not be framed mechanically.

16. Learned counsels for the parties concede that at the time of arguing the aforesaid Criminal Revision Petition no. 578/2013 before the Court, the aforesaid dicta of the Supreme Court was not brought to its notice. Be that as it may, a perusal of order dated 13.10.2014 passed in the aforesaid petition reveals that the thrust of the order was addition of charge and not replacement. The trial court completely misread the order.

17. In view of the aforesaid encapsulation of law and the facts of the present case, it is directed that the trial court shall frame the additional charge under the appropriate sections in terms of the evidence which has come on record against the respondents and thereafter, proceed with the

matter in terms of the provisions of Sections 216 and 217 Cr.P.C.

18. With the aforesaid directions, the present petition is disposed of alongwith the pending application.

19. A copy of the order be communicated to the trial court.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 06, 2020

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