

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.114 of 2021

Decided on: 17th May, 2021

Jitender Kumar

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

Coram

Ms. Jyotsna Rewal Dua, Judge

Whether approved for reporting?¹ Yes.

For the Petitioner: Mr. Dalip K. Sharma, Advocate.

For the Respondent: Mr. Anil Jaswal, Additional Advocate
General with Mr. Manoj Bagga,
Assistant Advocate General.
(Through Video Conference)

Jyotsna Rewal Dua, Judge (Oral)

Aggrieved against the order dated 18.08.2020
passed by the learned Special Judge (Forests), Shimla/Trial
Court, modifying/altering the charge against the petitioner,
instant revision petition has been preferred.

State moved an application for addition of
charge under Section 120B of the Indian Penal Code (IPC)
as well as for alteration of charge under Section 13(1)(c)
read with Section 13(2) of the Prevention of Corruption Act,
1988. It was alleged that the accused persons had connived
with each other to hatch a conspiracy and misappropriated

¹ Whether reporters of print and electronic media may be allowed to see the order?

public funds. This application was allowed by the learned Trial Court on 18.08.2020 to the extent that charge for offence of criminal misconduct under Section 13(1)(c) of the Prevention of Corruption Act was altered/modified.

Aggrieved, the petitioner has challenged the aforesaid order.

2. Heard learned counsel for the parties and gone through the documents appended with the petition.

3. It is not in dispute that on 04.08.2014, learned Trial Court held that no case was made out against the accused persons, namely Sant Ram Tanwar and Sher Singh Negi. These persons were discharged. Criminal Revision No.358 of 2014 filed by the State, challenging this order, has been dismissed by this Court on 23.09.2015. Learned counsel for the petitioner contends that when the other co-accused persons stood discharged, then there is no point for framing charge under Section 120B IPC against the petitioner. Primarily, aggrieved against the alleged framing of additional charge against the petitioner under Section 120B IPC, instant petition has been preferred. However, this contention is not required to be raised at all as the learned Trial Court has not at all agreed to add charge under Section 120B IPC against the sole accused, i.e. petitioner. The relevant observations of the learned Trial Court in this regard are as under:-

“..... Since other accused aforementioned already stand discharged it is not appropriate at this stage to add charge under Section 120-B of IPC against accused Jitender and Pawan between whom no criminal conspiracy is alleged. Therefore, this addition in charge in the considered opinion of this court cannot be made.....”

In view of the observations of the learned Trial Court, there is no reason for the petitioner to feel aggrieved. The amended charge appended at page 17 of the petition also does not make any reference to Section 120B IPC.

Insofar as addition/alteration of charge under Section 13(1)(c) of the Prevention of Corruption Act is concerned, the objection of learned counsel for the petitioner is that the charges were framed on 11.4/8.2014. Almost six years thereafter, the application for addition/alteration of charges has been made by the State at the stage when the matter was fixed for arguments. Such an application deserves to be dismissed. I am not inclined to accept this contention for the following reasons:-

(i). On 11.4/8.2014, the petitioner had already been charged for the offences under Section 409 IPC and Section 13(2) of the Prevention of Corruption Act. Section 13(1)(c) gives basic ingredients of the offence, i.e. “if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his

control as a public servant or allows any other person so to do.”

(ii). Section 216 Cr.PC, which is relevant for alteration/modification of the charge, was recently considered by the Hon'ble Apex Court in **(2020) 12 SCC 467**, titled **Dr. Nallapareddy Sridhar Reddy Versus State of Andhra Pradesh and others**, wherein the appellant therein was charged only for offences under Section 498A IPC alongwith Sections 3 and 4 of the Dowry Prohibition Act. In an application moved by the State under Section 216 Cr.PC for addition of charges under Sections 406 and 420 IPC, it was observed as under:-

“15. In order to adjudicate upon the dispute, it is necessary to refer to Section 216 of CrPC:

“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.”

16. **Section 216 appears in Chapter XVII CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase “add to any charge” in Sub-Section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done “at any time before judgment is pronounced”. Sub-Section (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the persecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-Section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to 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. Section 217 of the CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial.**

17. The decision of a two-judge Bench of this Court in *P. Kartikalakshmi v Sri Ganesh*, dealt with a case where during the course of a trial for an offence under Section 376 of the IPC, an application under Section 216 was filed to frame an additional charge for an offence under Section 417 of the IPC. *F.M. Ibrahim Kalifulla, J.* while dealing with the power of the court to alter or add any charge, held:

“6. ... Section 216 CrPC 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 CrPC 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 to 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.”

(emphasis supplied)”

Thus, the charge could be altered at any time before the pronouncement of the judgment subject to conditions set forth in Section 216 Cr.PC as elucidated above.

Instant was a case where charge under Section 13(2) of the Prevention of Corruption Act stood already framed against the petitioner. By allowing the application moved by the State under Section 216 Cr.PC, the learned Trial Court had only allowed alteration of charge to the extent that Section 13(1)(c) of the Prevention of Corruption Act was added. During hearing of the case before the learned Trial Court, learned Public Prosecutor stated that the evidence was already over and no witness was to be recalled or re-summoned or to be called or examined even after alteration of the charge. Similarly, learned counsel for the accused/petitioner also stated that the petitioner does not intend to recall or re-summon or examine any witness with regard to the altered charge. Thus, no prejudice whatsoever has been shown to have been caused to the accused by the alteration/modification of the charge.

In view of the above, the present petition lacks merit and is accordingly dismissed alongwith pending miscellaneous application(s), if any.

May 17, 2021
Mukesh

Jyotsna Rewal Dua
Judge