

(A.F.R.)

Reserved on 29.10.2021

Delivered on 02.11.2021

Court No. - 93

Case :- APPLICATION U/S 482 No. - 15632 of 2007

Applicant :- Rakesh Singh And Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- R.N.Sharma, Atul Sharma

Counsel for Opposite Party :- Govt. Advocate, Jata Shankar Pandey

Hon'ble Krishan Pahal, J.

1. Heard Sri Atul Sharma, learned counsel for the applicants and Sri Jata Shankar Pandey, learned counsel for the respondent no.2 and also Sri Vikas Goswami, learned A.G.A. for the State-respondent.

2. This application has been filed under Section 482 Cr.P.C. seeking to quash the impugned order dated 20.04.2007 passed by 16th Additional District Judge, Agra, framing the charge against the applicants under Sections 324/34, 307/34, 504 and 506 IPC, Police Station- Khera Rathore, District- Agra in Sessions Trial No.311 of 2007 (State Vs. Rakesh Singh and Others).

3. Brief facts of the case as per the First Information Report are that on the occasion of Holi celebrations on 15.03.2006 at about 04:30 PM in Village Gohara, Police Station Khera Rathore, District- Agra, the accused persons, namely, Rakesh Singh, Ugesh Singh, Pramod Kumar and Shyamveer assaulted Navichand son of Dalveer Singh with *lathi-danda* and on the screaming of Navichand, Rakesh Yadav and Om Prakash, the complainant, rushed to the spot to save him at which Rakesh Singh and Ugesh fired on them. One of the firearm shots which was fired by Ugesh, hit the left wrist of Om Prakash son of Jasram after which Om Prakash fell on the floor and thereafter they assaulted with sharp edged weapons on his head, he became unconscious thereafter. On hearing the noise of gunshot, Ram Naresh son of Banwari Lal and Kedar Singh son of

Gurudayal Singh came at the spot and picked up the complainant-injured Om Prakash. The accused-persons hurling abusive words threatened that if any one comes forward to become witness of this incident, will have to face dire consequences. In the incident, three persons, namely, Rakesh Yadav, Om Prakash and Navichand have sustained injuries.

4. The alleged incident occurred on 15.03.2006 at 04:30 PM and the First Information Report was also lodged promptly on the same day at 05:30 PM. The injured persons, namely, Rakesh Yadav, Om Prakash and Navichand were examined at C.H.C., Bah, Agra on 15.03.2006.

5. Injured Om Prakash was examined by Medical Officer (E.D.), C.H.C., Bah, Agra on 15.03.2006 at about 10:40 PM. He prepared injury report annexed as Annexure-2 to the affidavit and found following injuries on the person of Om Prakash :-

(i) An incised wound at radial side of dorsal aspect of lower part of left forearm; size 4.2 X 0.5 cm X muscle deep. Margins are clean cut & fresh bleeding present. Adv. X-ray left wrist c hand & lower ½ of forearm.

(ii) A red contusion at lateral aspect of right knee; size 4.5 X 0.9 cm.

In the opinion of the Medical Officer (E.D.), injury no.1 was kept under observation and injury no.(ii) is simple in nature. Caused No. (i) by sharp edged object and No. (ii) by hard blunt object and are about fresh in duration.

6. The X-ray report of injured Om Prakash dated 18.03.2006 indicates *“a radio opaque, round metallic density, foreign body particle in visualised area; there is no bony injury seen.”*

7. The submission of the learned counsel for the applicants is that there is a discrepancy in the injury report and the X-ray report of injured Om Prakash. The Injury Report of Om Prakash does not indicate any

gunshot injury. He further argued that on the basis of the said discrepancy, a charge under Section 307 IPC could not be framed against the applicants and the learned Trial Court has committed manifest error in doing so. Learned counsel for the applicants also placed reliance upon the judgement of Apex Court in the case of ***P. Kartikalakshmi Vs. Sri Ganesh and another*** reported in ***(2017) 3 SCC 347***, wherein it has been held that the power to alter the charge is vested only in court as per the intent and purpose of Section 216 of Cr.P.C. and it is not open for the prosecution or the accused to pray for alteration of charge. However, the said case law is limited only to the provisions of Section 216 of Cr.P.C. which states about adding or altering the charge. The word “adding” means addition of new charge/section and the word “alter” indicates to correct any typographical error committed in the charge framed. The intent of the legislature was not at all to alter the sections of the charge framed. It is settled law that charge once framed can never be deleted before the pronouncement of judgement and, therefore, this case law does not help the applicants at all in the present case.

8. Learned counsel for the applicants also prayed that the charge framed on 20.04.2007 may be quashed by invoking inherent powers of the High Court under Section 482 Cr.P.C.

9. Learned counsel has also placed reliance on ***(2008) 14 SCC 1 Rukmini Narvekar Vs. Vijaya Satardekar and Others***, wherein it has been laid down that the High Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained.

10. The said case law is also not applicable to the present case as it is concerned to the fact that extraneous material other than the charge-sheet can be looked into at the stage of framing of charge. It is not the case here in the subject matter and the same is regarding the discrepancy in the injury report and the X-ray report.

11. On the other hand, Sri Vikas Goswami, learned A.G.A. has opposed the prayer of the applicants and argued that if there is any doubt as to what offence has been committed, the Court may frame charge for or any of such offences as has been provided under Section 221 of Cr.P.C.

12. Sri Jata Shankar Pandey, learned counsel for the respondent no.2 has also placed reliance of two judgements of the Apex Court in the case of ***Amit Kapoor Vs. Ramesh Chander and another*** reported in **(2012) 9 SCC 460**, wherein it has been held as under:-

“At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty- All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not.”

13. In the case of ***Sri Kali Charan Shaw Vs. The State of West Bengal and Another*** reported in **(2017) CriLJ 2385**, it has been stated that any defect in framing of charge does not invalidate a criminal proceeding.

14. On perusal of impugned order dated 20.04.2007, it transpires that charge under Sections 324/34, 307/34, 504 and 506 IPC have been framed against the applicants after proper application of mind.

15. Except the said discrepancy in framing of charge under Section 307/34 IPC, the learned counsel for the applicants could not indicate any other illegality or irregularity in framing of charge.

16. Since the controversy is centred around the relevant provisions of Sections 221, 222 and 224 of Cr.P.C., I proceed to consider the same one by one.

17. Section 221 of Cr.P.C. provides where it is doubtful what offence has been committed.

“221. Where it is doubtful what offence has been committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.”

18. A bare perusal of Section 221 Cr.P.C. states that if at the trial, the facts prove one or more offences and doubt exists as to the particular offence or offences with which the accused should be charged, he may be charged with, and at one trial for all or any of such offences or he may be charged with, he may have committed in the alternative for one or other such offences.

19. Section 222 of Cr.P.C. also states that the conviction can be accorded for an offence proved and included in the offence charged. For ready reference, Section 222 of Cr.P.C. is reproduced as under:-

“222. When offence proved included in offence charged.

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.”

20. The accused can be charged for major offence and may not be found guilty thereunder but he may be convicted for a minor offence, if facts established indicate that such minor offence has been committed. This law has also been propounded by the Hon’ble Apex Court in ***Devinder Mohan Zakhmi Vs. Amritsar Improvement Trust and Others (2002) CriLJ 4485***; ***Dalbir Singh Vs. State of U.P. (2004) CriLJ 2025*** and ***Virendra Kumar Vs. State of U.P. (2007) CriLJ 1435***, wherein the charge framed under major offence was not proved and the accused was convicted for a minor offence.

21. Section 224 of Cr.P.C. provides that at the time of pronouncement of judgement, the Court may acquit the accused of any of the offence for which he has been charged with. For ready reference, Section 224 of Cr.P.C is reproduced as under:-

"224. Withdrawal of remaining charges on conviction on one of several charges.

When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.”

22. Thus, from the above discussion of the statutory provisions of the Code and the case laws relied upon, it is established that the discrepancy in the medical examination report can be properly addressed to by the

Trial Court at the stage of pronouncement of judgement during the course of trial by just and fair analysis of ocular and expert evidence produced thereto by either parties. At that stage, the said defect, if any, in framing of charge can be cured by invoking the powers vested in the Trial Court under Sections 221, 222 and 224 of Cr.P.C.

23. The inherent powers of the High Court provided under Section 482 Cr.P.C. could be exercised only when there is an abuse of process of the Code or where interference is absolutely necessary for securing the ends of justice. It is also settled that the inherent powers under Section 482 Cr.P.C. must be exercised very sparingly where proceedings have been initiated illegally, vexatiously or without jurisdiction. In the case of *Amar Nath Vs. State of Haryana* reported in *(1977) 4 SCC 551*, the Apex Court has held that the power conferred upon the High Court under Section 482 Cr.P.C. should be exercised sparingly and cautiously. However, in order to meet the ends of justice, the inherent powers should be exercised irrespective of anything contained under Section 397(2) of Cr.P.C. The delay in a criminal trial has deleterious effect on the administration of justice in which the society has a vital interest as the crime is not against an individual, it is against the society itself. The delay in trial affects the faith in the rule of law and efficacy of the legal system. The occurrence in the subject matter is of 15.03.2006 and the charge was framed on 20.04.2007 the stalling of such matters should not be allowed to continue on hyper-technical grounds.

24. Without expressing any opinion on the merits of the case, the instant application is found devoid of merits and is, accordingly, dismissed.

25. Interim order already stood vacated vide order dated 22.04.2019 passed by this Court.

Order Date :- 02.11.2021

Siddhant