

**Court No. - 70**

**Case :-** APPLICATION U/S 482 No. - 12560 of 2023

**Applicant :-** Yograj Singh

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

**Counsel for Applicant :-** Vivek Kumar Maheshwari

**Counsel for Opposite Party :-** G.A., Nipun Singh

**Hon'ble Shekhar Kumar Yadav, J.**

Heard Sri Anoop Trivedi, learned Senior Advocate assisted by Mr Vivek Kumar Maheshwari, learned counsel for the applicant, Mr Nipun Singh, learned counsel for the opposite party no. 2, Mr R. P. Mishra, learned AGA for the State and perused the material on record.

By means of this application, applicant/informant has prayed for setting aside the order dated 20.3.2023 passed by learned District and Sessions Judge, Muzaffar Nagar in S.T. No. 561 of 2004 (State Vs Naresh Tikait), pending in the Court of Addl. Sessions Judge, Court No. 5, Muzaffar Nagar, relating to Case Crime no. 97 of 2003, under Section 302 IPC, P.S. Bhaurakalan, District Muzaffarnagar whereby the application of the applicant under Section 216 Cr.P.C. (paper No. 337 Kha) for amending the charge to the extent of '**place of occurrence**' has been rejected

Brief facts of the case are that the applicant lodged an FIR in relation to murder of his father, namely, Jagveer Singh, on 7.09.2003 vide Case Crime No. 97 of 2003, under Section 302 IPC, at P.S. Bhaurakalan, District Muzaffarnagar alleging therein that on 6.9.2003, when the informant along with his father and one Ramveer Singh, while going towards their village, are said to have reached in front of the house of one Parveen son of Ramphal at about 6 p.m. in Ambassdor Car, which was being driven by father of the informant, at that time, one Naresh Tikait son of Mahendra Tikait, Parveen son of Ramphal and Bittu @ Patwari son of Ramphal were standing in the way in a white coloured Maruti car in front of his house, and, as soon as father of the informant, decreases the speed of his vehicle, all the three accused persons, having country made pistols in their hands, came out of their car and accosted the vehicle of the informant from all sides, and, thereafter accused Praveen and Naresh are said to have shot dead his father by country made pistols. It is further alleged that at the time of incident, there were sufficient sun light and on raising alarm all the three accused persons fled away from the spot after

leaving their Maruti Car. It is further alleged that informant immediately took his father to the Government Hospital but he died on the way to Hospital.

The matter was investigated by the police and thereafter the case was transferred to the CBCID, UP Police and after investigation charge sheet was filed before the concerned Court exonerating the accused Naresh Tikait, who later on summoned by the trial court in exercise of power under Section 319 Cr.P.C. Charge is said to have been framed against the accused Naresh Tikait under Section 302 IPC on 11.6.2007 by Addl. Sessions Judge, Court No. 6, Muzaffarnagar, to the following effect as quoted below:-

*"That on 6.9.2003 at 6 p.m. at village Alawalpur Majra, Police station Baura kalan, District Muzaffarnagar with common intention you and your companions Paveen Kumar and Rajeev Kmar caused grievous injuries by country made pistols to informant's father Jagveer Singh and due to said injuries, he succumbed, as such you committed murder which is punishable under Section 302 read with Section 34 of the IPC and is cognizable by this Court."*

The grievance of the applicant is that in the FIR, itself, the informant/applicant has specifically mentioned the place of occurrence that the accused persons murdered his father in front of the house of accused Praveen Kumar at Village Alawalpur Majra and during the course of investigation, the Investigating Officer has also prepared the site plan in which he has also mentioned that the occurrence took place in front of the house of Praveen but the trial court committed illegality in framing of the charge against the accused by not mentioning the specific place of occurrence. Further, the applicant, who has been examined as P.W.-1 in his deposition, he had specifically stated that on 6.9.2003 at 6 p.m., the accused persons fired at his father in front of the house of accused Praveen at Village Alawalpur Majra. Another eye witness i.e. P.W.-2, namely, Yashpal has also stated in his deposition to the same effect. It is also alleged that during course of final argument, counsel for the applicant noticed that the charge framed against the accused Naresh Tikait is defective and needs alteration in the charge framed against the accused. Therefore, applicant/informant moved an application before the trial Court on 17.3.2023 with a prayer that in the charge framed against the applicant the place of occurrence has been typed as Village Alawalpur and no specific place has been mentioned, whereas in the FIR and in the site plan the place of occurrence is in front of the house of accused Praveen at Village Alawalpur Majra is mentioned, as such to fix the place of occurrence in front of the house of the accused Praveen Kumar, and also to avoid any technical error in future to get benefit of the same by either side, it becomes necessary to amend the charge to the extent that the place of occurrence be mentioned. The said

application has been rejected by the court below vide impugned order, which is subject matter of challenge before this Court.

Record further discloses that the applicant also approached the Apex Court by filing Transfer Application on account of the threats extended by the accused with a prayer for transferring the Sessions Trial pending before the court of 5th Addl. District and Sessions Judge, Muzaffarnagar, UP to the court of District and Sessions Judge, Tishazari Courts, New Delhi, which was dismissed by the Hon'ble Supreme Court vide order dated **10.2.2023** considering the fact that the trial is pending since the last 19 years and the fact that the evidence is already over and the trial is at the stage of final arguments. However, it was directed that the trial is conducted in a peaceful and fair manner as it is apprehended on behalf of the applicant that the accused are given a special treatment. Trial court was also directed to conclude the trial at the earliest and preferably, **within a period of six months from today.**

Record further discloses that thereafter applicant also filed transfer application before the District and Sessions Judge, Muzaffar Nagar with a prayer to transfer the said sessions trial to other appropriate court of District, Muzaffarnagar, which too was dismissed by order dated 23.02.2023 passed by District and Sessions Judge, Muaffarnagar. Aggrieved by the said order, applicant preferred Transfer Application (Criminal) No. 156 of 2023 before this Court, which is stated to be pending.

Submission of learned counsel for the applicant is that the charge framed against the accused is not sustainable in law in view of the provision of Section 212 of Cr. P.C. as the specific place the incident is not mentioned in the charge framed against the accused.

Learned counsel for the accused/respondent no. 2 stated that there is no irregularity in the charge framed against the applicant as the prosecution witnesses have stated in their deposition regarding the place of incident and during cross examination questions regarding place of incident have been asked, therefore, no prejudice would be caused to either side. It is further argued that the defect in framing of the charges must be so serious that it cannot be covered under Section 464/465 Cr.P.C., which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or

irregularity in framing the relevant charges, has led to a failure of justice, the court must have regard to whether an objection could have been raised at an earlier stage during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s). In support of his argument, he placed reliance on the case of **(2012) 10 SCC 476 Darbar Singh Vs State of Punjab**.

To the contrary, learned AGA appearing for the State contended that the charge against the accused was framed on 11.06.2007, under Section 302/34 I.P.C. It is evident from the Charge that **except place of occurrence**, date and time of occurrence has been mentioned therein. It is further submitted that the charge is an accusation made against a person in respect of an offence alleged to have been committed by him/her and the basic requirement is that it must be so framed as to give the accused person a fairly reasonable idea of the case which he/she has to face. The mere irregularity in framing the charge against the accused, does not vitiate the trial, unless some prejudice is caused to the accused. It is further submitted that the scope of powers of the court to alter or add any charge under Section 216 Cr.P.C. is very wide in nature and it confers exclusive jurisdiction on the court in regard to such matters which may be exercised at any time before the judgement is pronounced. The rights of the parties in regard to the same would be extremely limited and no addition or alteration or objection with regard thereto, can be raised as a matter of right.

To buttress his argument, learned AGA further pointed out that Section 215 Cr.P.C. clearly states that no error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice. Section 464 Cr.P.C. also provides that no finding sentence or order by a competent Court shall be deemed to be invalid merely on the ground that no charge has been framed or that there are some errors, omission or irregularity in the charge unless some failure of justice has occurred on that ground. In order to take the benefit of the same either of the parties must establish that failure of justice has been occasioned by an error or defect in stating the particulars in the charge. No such plea of any prejudice

supported with evidence was adduced suggestive of the failure of justice due to any defect in framing of charge. There is also nothing on record to show that any prejudice has been caused to the applicant due to such omission. Under such circumstances omission to mention the place of occurrence in the charge does not vitiate the trial, when the trial is at the fag end. Learned AGA has also pointed out that there is sufficient material available against the accused, which can at best be appreciated in evidence during trial. Thus, the impugned order does not suffer from any illegality, infirmity or any error of law justifying interference by this Court in exercise of its power under Section 482 Cr.P.C.

Considered the submission of learned counsel for the parties and perused the record.

Perusal of the impugned order discloses that while dismissing the application, learned Trial Court has returned a finding to the effect that during the cross examination of the prosecution witnesses, the question regarding place of incident have been asked by the accused. It is clear from the evidence that the accused had full knowledge about the place of occurrence of the crime committed by them and the accused during trial have enough opportunity to explain the situation of the crime committed by them. It has been clearly stated in the court by the learned counsel for the accused Naresh Kumar that the accused had no suspicion regarding the incident alleged against him and the prosecution witnesses have been clearly cross-examined about the place of incident. Thus there arises no question of prejudice to be caused to either of the parties.

Not doubt, it is trite law that in case of any omission in framing of the charge if it comes to the knowledge of the court trying the offence, the power to alter the charge under Section 216 Cr.P.C. is always vested in the Court to be exercised at any time before the judgment is pronounced. The section is in the nature of an enabling provision for the Court to exercise its power under certain contingencies when the relevant facts with regard thereto are brought to its notice. In case where a situation so demands if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, the Court may do so on its own or upon an application of the parties.

How prejudice is to be shown ? Much depends on facts of the case. Hon'ble the Apex Court in the case of **Main Pal Vs State of Haryana, AIR 2010 SC 3292** enunciated the following principle as under:

(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(ii) The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.

**(iii) In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly, and whether he was given a full and fair chance to defend himself.**

However, this court is also mindful of the provisions of Section 216 (3) Cr.P.C., which reads as under:-

*"(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."*

Going through the aforesaid provision, it is very much clear that if the alteration or addition to a charge is such that no prejudice is caused to either the parties, court may, in its discretion, proceed with the trial by amending the said technical defects. It is admitted by the parties that the prosecution witnesses have been examined regarding the place of incident and by adding the place of incident in the said charge the same does not cause any prejudice to either of the parties.

In view of above, the court below is directed to amend the charge by incorporating the 'place of incident' in the original charge as per provision of Section 216(3) Cr.P.C. without recourse to further evidence and thereafter may proceed with the trial and conclude the same as expeditiously as possible keeping in view the time frame as directed by the Apex Court.

**With aforesaid observation, the application is disposed of.**

**Order Date :- 3.5.2023**

**RavindraKSingh**