

Mainul Islam Vs. Alimuddin

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Court : Guwahati

Decided On : Jul-18-2003

Judge : S.K. Kar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 216; Indian Penal Code (IPC) - Sections 379

Appeal No. : Criminal Revision No. 396 of 2003

Appellant : Mainul Islam

Respondent : Alimuddin

Advocate for Def. : None

Advocate for Pet/Ap. : N. Choudhury, S.C. Kayal, S.K. Ghose and R. Das, Advs.

Disposition : Petition rejected

Judgement :

S.K. Kar, J.

1. Head the learned lawyer for the petitioner.

2. The petition is presented under Section 397 read with Section 482 of the Code of Criminal Procedure in order to challenge the order dated 27.5.2003, passed by the learned Chief Judicial Magistrate, Karimganj, in CR Case No. 900/2002 under

Section 379 IPC.

3. The petitioner, namely, Shri Mainul Islam has assailed the aforesaid order on the ground that in course of trial on consideration of the examination-in-chief of PWs charges under Section 448/323/427 of IPC were framed against the petitioner. The charges were read over and explained to the accused, to which he pleaded not guilty.

4. The contention of the petitioner is that in view of the fact that the cognizance was initially taken up under Section 448/323/427 IPC, the Court ought to have decided the question of guilt on the basis of the same sections. But then, learned Court after proceeding with the matter again added Section 379, IPC without giving any opportunity to him of being heard. That if heard, there could have been scope of discharge order in his favour in so far offence under Section 379 IPC was concerned etc. Hence, the contention of the petitioner is that the order dated 27.5.2003, passed in C.R. Case No. 900/02 is vitiated and liable to be quashed.

5. I have perused the impugned order dated 27.05.2003, copy of which has been annexed as Annexure-2, and the earlier order passed in this context dated 21.5.2002 (Annexure-1). In my considered view, the Court has taken appropriate decision under the facts and circumstances as stated as above. The trial cannot be reverted back for the consideration of discharge at this stage. Section 216 of Cr.P.C. goes as follows :

' 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) *** **

6. In this case, no prejudice has been alleged by the petitioner.

7. The petition is without merit and is rejected.

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