

Pawan Kumar Vs. State of U.P.and Another

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Court : Allahabad

Decided On : Jan-31-2011

Judge : Shri Kant Tripathi, J.

Appeal No. : APPLICATION U/S 482 No. - 1319 of 2011

Appellant : Pawan Kumar

Respondent : State of U.P.and Another

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Sunil Vashishth, Adv

Judgement :

1. This is a petition under section 482 of the Code of Criminal Procedure (in short Cr PC) for quashing the charges dated 4.5.2010 framed against the applicant Pawan Kumar and other accused under sections 364, 302/149 and 201 IPC in S.T.No. 87 of 2003, State vs. Kunwarpal and others, pending in the court of Additional Sessions Judge, Court No.11, Meerut.

2. Learned counsel for the applicant submitted that initially the Additional Sessions Judge framed only the charge under section 364 IPC on 6.5.2004 and accordingly the trial proceeded in regard to the said charge. During the trial, as many as eight witnesses have been examined in support of the charge under section 364 IPC. But at that stage, the learned Additional Sessions Judge amended the charge and

thereby added charges under sections 302/149 and 201 IPC against the applicant. Learned counsel further submitted that the Additional Sessions Judge had no power to amend the charge. Moreover the applicant has not been provided any opportunity to cross-examine the witnesses already examined, so as to enable him test their veracity in regard to the amended charges.

3. In my opinion, the learned Additional Sessions Judge had power to amend the charge at any stage of the trial. Section 216 Cr PC provides for amendment of the charge, which has conferred a power on the court to alter or add any charge at any time before judgment is pronounced. The provisions of section 216 Cr PC may be reproduced as follows:

"216. (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 had been already obtained for a prosecution on the same

facts as those on which the altered or added charge is founded."

4. Section 217 Cr PC empowers the court to recall witnesses already examined and to permit the prosecution and defence to adduce additional evidence in regard to the amended charges. Section 217 Cr PC may be reproduced as follows:

"217. Whenever a charge is altered or added to by the court after the commencement of the trial, the prosecutor and the accused shall be allowed-

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the court may think to be material."

5. The provisions of section 216 and 217 Cr PC very clearly provide that the court has power to alter or amend any charge or add any new charge at any stage of the proceedings before judgment is delivered. It is also permissible for the court to further proceed with the trial from the stage of alteration or addition of the charge or charges as if the altered or added charge had been the original charge but this can be done only when the court is of the opinion that holding the trial in such manner is not likely to prejudice the accused in his defence or the prosecutor in the conduct of the case. If in the opinion of the court there is likelihood of such prejudice to the accused or the prosecutor, the court may direct for a de novo trial or adjourn the trial for such period as may be considered necessary. If in regard to the altered or amended charge any previous sanction for prosecution is necessary, the court shall not proceed with the trial until such sanction is obtained or unless such sanction has been already obtained in regard to the same fact on which basis the charge has been altered or added. It is also well settled that

whenever a charge is altered or added after the commencement of the trial, the prosecution and also the accused are entitled to recall or re-summon and examine with reference to such alteration or addition any witness who may have been examined. However, the court, has power to refuse to do so if it, for reasons to be recorded in writing, considers that the request for recall or re-examination of the witnesses has been made for the purpose of vexation or delay or for defeating the ends of justice. Apart from this, the court has further power to call any additional witness to whom it considers material for dispensation of justice. Therefore, as and when any charge is altered or any new charge is added, the court has power to recall or re-summon any witness with reference to altered or added charge but this can be refused for reasons to be recorded in writing if the request for recalling the witness has been moved for the purpose of vexation, delay or for defeating the ends of justice.

6. The learned trial court is, therefore, under legal obligation to observe the aforesaid principles after the addition of the new charges under sections 302/149 and 201 IPC. The learned trial court is, therefore, directed to adhere to the provisions of sections 216 and 217 Cr PC. The petition is accordingly disposed of.

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