

K. Ravi

v.

State of Tamil Nadu & Anr.

(Criminal Appeal No. 3598 of 2024)

29 August 2024

[Bela M. Trivedi* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Matter pertains to the right of the accused to file a fresh application u/s.216 Cr.P.C. seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge u/s.227 Cr.P.C. has already been dismissed; and as regards the maintainability of the revision application u/s.397 Cr.P.C. against the order dismissing application seeking modification of charge framed which would be an interlocutory order.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.216 – Alteration of charge – s.227 – Discharge – On facts, in a murder trial, accused filed application u/s.227 seeking discharge from the case – Dismissal of application by the Sessions court as well as the High Court – Accused then filed application u/s.216 seeking alteration of the charge – Application dismissed by the Sessions court, however, revision application allowed by the High Court – Legality of:

Held: s. 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge u/s.227 has already been dismissed – Order dismissing application seeking modification of charge would be an interlocutory order and in view of the express bar contained in s.397(2), the revision application itself is not maintainable – Accused miserably failed to get himself discharged from the case in the first round of litigation, when he had filed the application u/s.227, still however he filed another vexatious application seeking modification of charge u/s.216 to derail the criminal proceedings – High Court, on an absolutely extraneous consideration and in utter disregard

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of the settled legal position, allowed the revision application filed by the accused, though legally untenable, and set aside the charge framed by the Sessions Court against the accused – Said order being ex facie illegal, untenable and dehors the material on record, is set aside – Order passed by the Sessions Court is restored – Accused having sufficiently derailed the proceedings by filing frivolous and untenable applications one after the other misusing the process of law, cost of Rs. 50,000/- to be paid by the accused to the appellant – s.397 – Costs. [Paras 8, 10-13]

Code of Criminal Procedure, 1973 – s.216 – Alteration of charge – Accused filing a fresh application u/s.216 for alteration of charge, when his application seeking discharge u/s.227 has already been dismissed – Correctness:

Held: s.216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alteration or addition to a charge is made, the court has to follow the procedure as contained therein – s.216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge u/s.227 has already been dismissed – Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings – Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed – Such practice is highly deplorable, and if followed, should be dealt with sternly by the courts – Judicial depreciation. [Para 11]

Code of Criminal Procedure, 1973 – s.397 – Calling for records to exercise powers of revision – Scope of s.397:

Held: Scope of interference and exercise of jurisdiction u/s.397 is extremely limited – Apart from the fact that s.397(2) prohibits the Court from exercising the powers of revision, even the powers u/s.397(1) thereof should be exercised very sparingly and only where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely

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by framing the charge – Court exercising revisional jurisdiction u/s.397 should be extremely circumspect in interfering with the order framing the charge, and could not have interfered with the order passed by the trial court dismissing the application for modification of the charge u/s.216 CrPC, which order otherwise would fall in the category of an interlocutory order. [Para 10]

Case Law Cited

Amit Kapoor v. Ramesh Chander and Another [\[2012\] 7 SCR 988](#) :
[\(2012\) 9 SCC 460](#) – referred to.

List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

List of Keywords

Application u/s.216 Cr.P.C.; Framing of charge by the court; Maintainability of the revision application u/s.397 Cr.P.C.; Modification of charge; Interlocutory order; Alteration of charge; Discharge; Vexatious application; Extraneous consideration; Frivolous and untenable applications; Enabling provision; Ignorance of law; Practice highly deplorable; Powers of Revision; Revisional Jurisdiction.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 3598 of 2024

From the Judgment and Order dated 27.07.2017 of the High Court of Judicature at Madras in CRLRC No. 1268 of 2016

Appearances for Parties

V. Elanchezhiyan, V. Rama Krishnan, Padhmanabha Raja K.R., Shafik Ahmed, Nasim Anwar, Ms. Anju, Manoj Kumar, Ms. Anupama Singh, Ms. Parul Priya, Tushar Pahwa, Ms. Apsana Khatoon, Advs. for the Appellant.

Sidharth Luthra, Siddharth Bhatnagar, Sr. Advs., Sabarish Subramanian, C. Kranthi Kumar, Vishnu Unnikrishnan, Naman Dwivedi, Danish Saifi, Sarathraj B, Ms. Shakun Sharma, Ms. Pracheta Kar, Aditya Sidhra, Nadeem Afroz, Dharmendra Kumar Pandey, Ms. Aarjoo Rawat, Advs. for the Respondents.

K. Ravi v. State of Tamil Nadu & Anr.**Judgment / Order of the Supreme Court****Judgment****Bela M. Trivedi, J.**

1. Leave granted.
2. The instant appeal filed by the Appellant – Defacto Complainant arises out of an extremely unusual and untenable Judgment and Order dated 27.07.2017 passed by the High Court of Judicature at Madras in Criminal Revision being Crl.R.C. No.1268 of 2016 filed by the Respondent No. 2 (originally Accused No. 2) under Section 397 and 401 of Cr.P.C., whereby the High Court while allowing the said Revision Application set aside the order dated 18.10.2016 passed by the Principal Sessions Judge, Dharmapuri framing charge in SC No.90 of 2015, and directed the further investigation in Crime No.2074 of 2009 under Section 173(8) of Cr.P.C.
3. The brief facts leading to the present appeal are that an FIR being No. 2074 of 2009 came to be registered on 24.11.2009 at Police Station, Dharmapuri against 9 accused including the Respondent No. 2 (A-2) for the offences under Section 147, 148, 323, 324, 307 and 302 of IPC. The said FIR was registered at the instance of the defacto complainant ADMK Ravi i.e., the present appellant. It was alleged *inter alia* in the said FIR that on 24.11.2009, the accused no. 1 S.R. Vetivel, AIADMK Town Secretary along with his group prevented the complainant and his group from filing the nomination at AIADMK Party Office at Dharmapuri and also started threatening the complainant. The Accused Vetivel thereafter shouted to bring weapons that were kept in a vehicle parked at the ground floor of the Dharmapuri District Party Office and the Accused Baskar son of Mathikopalayam Pachiyappan (the Respondent No. 2 herein) brought the weapons kept in his Tata Safari White Car. Thereafter, the accused Vetivel holding the knife ran towards the brother of the complainant i.e. Veeramani, who was running towards the complainant. Thereafter the accused Mathikopalayam Annadurai caught hold of Veeramani and the accused Vetivel stabbed Veeramani with knife on his chest and the accused Baskar (R-2) gave a blow on the head of Veeramani repeatedly and also beat the complainant with the iron pipes. The other accused also assaulted the complainant and others as narrated in the said FIR. Thereafter the complainant and

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his brother Veeramani were taken to the Dharmapuri government hospital by some people for treatment, where his brother Veeramani expired during the course of treatment.

4. The Investigating Officer after collecting sufficient evidence against all the accused submitted chargesheet implicating 31 accused before the Court of Judicial Magistrate, who committed the case to the Court of Sessions for trial.
5. The Respondent No. 2 filed an application before the Sessions Court seeking his discharge from the case under Section 227 of Cr.P.C. in the said Sessions case, which came to be dismissed by the Sessions Court vide the order dated 01.07.2016. The said order came to be challenged by the Respondent No. 2 before the High Court by filing a Revision Application being No. Crl.R.C. No. 953 of 2016. The said Revision Application came to be dismissed by the High Court vide the order dated 05.08.2016 specifically holding that there were sufficient incriminating materials available against the Respondent No.2 to frame the charge and that the Sessions Court had rightly dismissed the application filed by the Respondent No. 2 under Section 227 of Cr.P.C.
6. It appears that thereafter the Sessions Court framed charge against all the accused. The Respondent No. 2 (A-2) was charged for the offence under Section 302 r/w 149, 147, 148 and 324 of IPC. The Respondent No.2 along with other accused again filed a vexatious application being CRMP No. 1679/2016 in SC No. 90/2015, under Section 216 of Cr.P.C seeking alteration of the charge on the ground that the accused no. 2 and others were not present at the scene of offence on 24.11.2009. The said application came to be dismissed by the Sessions Court vide the order dated 18.10.2016 specifically observing that there were statements of eye witnesses available on record to show that the Respondent No.2 (A-2) was present at the scene of occurrence. From the statements of LW-1 Ravi, LW-2 Govindam, LW-3 Tamilarasu, LW-4 Dhandapani and LW-5 Andiappan the role of the accused no. 1 and 2 was also revealed. It was also observed that the charge was framed against all the accused based on material on record available with the Court, and that as per the settled legal position the charge could be altered at any stage of the proceedings. Being aggrieved by the said order the Respondent

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No.2 preferred the Revisional Application being Crl.R.C. No.1268 of 2016, wherein the High Court passed the impugned order as stated hereinabove.

7. From the above conspectus of events, it clearly transpires that the Respondent No.2 after having failed to get himself discharged from the Sessions Court as well as from the High Court in the first round of litigation, filed another vexatious application before the Sessions Court under Section 216 of Cr.P.C., after the framing of charge by the Sessions Court, for modification of the charge. The Sessions Court having dismissed the said application, the Respondent No.2 preferred the Revisional Application before the High Court under Section 397 and 401 of Cr.P.C. The High Court in its unusual impugned order, discharged the Respondent No. 2 (A-2) from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court and that position had attained finality. The High Court utterly failed to realise that the order impugned against it was the order passed by the Sessions Court rejecting the application of the Respondent No. 2 seeking modification of the charge framed against him under Section 216 of Cr.P.C., and the said order was an order of interlocutory in nature.
8. It is pertinent to note that the order dismissing application seeking modification of charge would be an interlocutory order and in view of the express bar contained in sub-section (2) of Section 397 Cr.P.C., the Revision Application itself was not maintainable.
9. At this juncture, it would be apt to refer to the observations made by this Court in Amit Kapoor vs. Ramesh Chander and Another,¹ explaining the scope of Section 397 Cr.P.C. It was held that -

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for

¹ [2012] 7 SCR 988 : (2012) 9 SCC 460

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the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

- 13.** Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice *ex facie*. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under the CrPC."
- 10.** Thus, the scope of interference and exercise of jurisdiction under Section 397 Cr.P.C. is extremely limited. Apart from the fact that sub-section 2 of Section 397 prohibits the Court from exercising the powers of Revision, even the powers under sub-section 1 thereof should be exercised very sparingly and only where the decision under challenge is grossly erroneous, or there is non-compliance of the provisions of law, or the finding recorded by the trial court is based on no evidence, or material evidence is ignored or judicial discretion is exercised arbitrarily or perversely by framing the charge. The Court exercising Revisional Jurisdiction under Section 397 should be extremely circumspect in interfering with the order framing the charge, and could not have interfered with the order passed by the Trial Court dismissing the application for modification of the charge under Section 216 Cr.P.C., which order otherwise would fall in the category of an interlocutory order.

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11. It is trite to say that Section 216 is an enabling provision which enables the court to alter or add to any charge at any time before judgment is pronounced, and if any alteration or addition to a charge is made, the court has to follow the procedure as contained therein. Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts.
12. So far as the facts of the present case are concerned, as stated here in above the Respondent No.2 had miserably failed to get himself discharged from the case in the first round of litigation, when he had filed the application under Section 227 Cr.P.C, still however he filed another vexatious application seeking modification of charge under Section 216 of Cr.P.C. to derail the criminal proceedings. The said Application also having been dismissed by the Sessions Court, the order was challenged before the High Court by filing Revision Application under Section 397 Cr.P.C. The High Court, on an absolutely extraneous consideration and in utter disregard of the settled legal position, allowed the Revision Application filed by the Respondent No. 2, though legally untenable, and set aside the charge framed by the Sessions Court against the Respondent No. 2. The said order being *ex facie* illegal, untenable and dehors the material on record, the same deserves to be set aside.
13. In that view of the matter, impugned order is set aside. The order passed by the Sessions Court is restored. The Respondent no. 2 (A-2) having sufficiently derailed the proceedings by filing frivolous and untenable applications one after the other misusing the process of law, the present Appeal is allowed with cost of Rs. 50,000/- to be paid by the Respondent No. 2 to the Appellant within two weeks. The Respondent No. 2 shall first deposit the cost in the office of this Court, which shall be permitted to be withdrawn by the Appellant.

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14. The Sessions Court is directed to proceed further with the trial against all the accused including the Respondent No. 2 (A-2) in accordance with law and as expeditiously as possible. All the parties are directed to cooperate the trial court to conclude the trial as expeditiously as possible. It is further directed that non-cooperation of any of the accused in proceeding with the trial shall entail cancellation of their bail.
15. The Appeal stands allowed, with cost as directed. The office shall ensure compliance of the order of payment of cost by the Respondent No. 2, and report to the Court in case of non-compliance.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Nidhi Jain