Form No.J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Asha Arora

C.R.R. 2533 of 2018

Satrajit Roy
versus
The State of West Bengal & Anr.

For the Petitioner	:	Mr. Souvik Mitter, Mr. Arindam Jana, Mr. Soumyajit Chatterjee.
For the State	:	Mr. S. G. Mukherjee, Ld. P.P., Ms. Faria Hossain.
For the Opposite Party No.2	:	Mr. Ayan Bhattacharyya, Mr. Sharequl Haque, Mr. Samarjit Ghosal.

Heard On : 12-06-2019.

Judgement On : 12-06-2019.

Asha Arora, J. :

By the instant application the petitioner has assailed the order dated 21st August, 2018 passed by the learned Additional Sessions Judge, Fast Track 3rd Court, Barrackpore, North 24-Parganas in ST No. 3(4) of 2018 arising out of Titagarh P.S. Case No. 538 of 2012 dated 15th September, 2012 under section 302 of the Indian Penal Code whereby an application under section 216 of the

Code of Criminal Procedure filed by the opposite party no.2 herein/defacto complainant was allowed.

Learned counsel for the petitioner submits that by an order dated 11th April, 2018 the trial court, upon perusal of the materials in the case diary, framed charge under section 306 of IPC against the accused/petitioner but on a subsequent date, on 21st August, 2018 the aforesaid charge was altered on the basis of an application under section 216 of the Code of Criminal Procedure filed by the defacto complainant/opposite party no.2 herein. By the impugned order the learned trial Judge framed charge for the offences punishable under sections 302 and 376 of IPC against the accused-petitioner. Placing reliance on **P. Kartikalakshmi Versus Sri Ganesh and Another** reported in **(2017) 3 Supreme Court Cases 347**, learned counsel for the petitioner sought to impress that the opposite party no.2 herein/defacto complainant has no locus standi to file an application for alteration of the charge since the power under section 216 of the Code of Criminal Procedure vested in court is exclusive and the defacto complainant or the accused or the prosecution cannot seek addition or alteration of charge by filing any application as a matter of right. It has further been canvassed that the power to alter a charge is barred by section 362 of the Code of Criminal Procedure since the order of charge has attained finality so alteration or review of such a final order except for correcting a clerical or arithmetical error is impermissible. To buttress his submission, learned counsel for the petitioner placed reliance on **Sabur Hossain Biswas @ Paltu Versus State of West Bengal & Others** reported in **(2008) 2 CHN 756**. It has also been argued that from the post-

mortem report of the deceased victim it would appear that the injuries found on the person of the victim are not sufficient to make out a case for the offence under section 302 of IPC.

Repudiating the above submissions, learned counsel for the opposite party no.2 invited the attention of this Court to paragraph 6 of the judgement in **P. Kartikalakshmi** (supra) relied on by the petitioner. Referring to the aforesaid relevant paragraph 6, learned counsel submits that the power vested under section 216 of the Code of Criminal Procedure though exclusive to the Court, under certain contingencies if an error or omission is brought to the notice of the Court or if it comes to the knowledge of the Court, the alteration or addition if necessary may be effected. On the point of *locus standi* of the defacto complainant, reference has been made to **Amanullah and Another Versus State of Bihar and Others** reported in **(2016) 6 Supreme Court Cases 699 (paragraph 19)**. Learned counsel for the opposite party no.2 argued that the bar under section 362 of the Code of Criminal Procedure is not applicable in view of the specific provision under section 216 CrPC which enables the Court to alter or add to any charge at any stage of the proceeding before the pronouncement of judgement. To counter the argument advanced on behalf of the petitioner on the point of alteration of charge, learned counsel for the opposite party no.2 placed reliance on paragraphs 10, 17 and 18 of the decision in **Anant Prakash Sinha alias Anant Sinha Versus State of Haryana and Another** reported in **(2016) 6 Supreme Court Cases 105**.

In the context of the argument on the point of locus standi, it may be profitable to refer to the case of **Ratanlal Versus Prahlad Jat and Others** reported in **(2017) 9 Supreme Court Cases 340**. The relevant paragraphs 8, 9 and 10 of the aforesaid judgement are quoted hereinbelow :

> **"8. In *Black's Law Dictionary*, the meaning assigned to the term "locus standi" is "the right to bring an action or to be heard in a given forum". One of the meanings assigned to the term "locus standi" in *The Law Lexicon* of Shri P. Ramanatha Aiyar, is "a right of appearance in a Court of justice". The traditional view of locus standi has been that the person who is aggrieved or affected has the standing before the court, that is to say, he only has a right to move the court for seeking justice. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in India and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. It is now well-settled that if the person is found to be not merely a stranger to the case, he cannot be non-suited on the ground of his not having locus standi.**
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> **9. However, criminal trial is conducted largely by following the procedure laid down in CrPC. Locus standi of the complainant is a concept foreign to criminal jurisprudence. Anyone can set the criminal law in motion except where the statute enacting or creating an offence indicates to the contrary. This general principle is founded on a policy that an offence, that is an act or omission made punishable by any law for the time being in force, is not merely an offence committed in relation to the person who suffers harm but is also an offence against the society. Therefore, in respect of such offences which are treated against the society, it becomes the duty of the State to punish the offender. In *A.R. Antulay v. Ramdas Sriniwas Nayak*, a Constitution Bench of this Court has considered this aspect as under: (SCC pp. 508-09, para 6)**

"6. ... In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force [see Section 2(n) CrPC] is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statue indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straitjacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.

10. In *Manohar Lal v. Vinesh Anand*, this Court has held that the doctrine of locus standi is totally foreign to criminal jurisprudence. To punish an offender in the event of commission of an offence is to subserve a social need. Society cannot afford to have a criminal escape his liability since that would bring about a state of social pollution which is neither desired nor warranted and this is irrespective of the concept of locus."

The defacto complainant is the father of the deceased victim who moved an application under section 216 of the Code of Criminal Procedure before the trial court for alteration of the charge. At this juncture it may be useful to quote paragraph 6 of **P. Kartikalakshmi's** case (supra) which reads as follows :

"6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order needs to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law."

It is significant to mention that the aforesaid decision has been relied on by the petitioner but it is evident from paragraph 6 of the judgement that section 216 of the Code of Criminal Procedure is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In the case in hand, the error or omission in framing the charge was brought to the notice of the trial court by the defacto complainant and accordingly the charge was altered upon perusal of the material which was overlooked. The relevant portion of the impugned order is quoted hereinbelow :

"On the date of hearing of discharge application u/s 227 CrPC filed by accused, learned prosecutor did not highlight the nature of the 21 marks of injuries including the marks of sexual assault noted at the time of post

mortem examination over the dead-body of the victim. The charge-sheet by the investigating officer has been submitted for offence punishable u/s 306 IPC. At the time of hearing learned defence Counsel strongly insisted that the mark of injuries found on the neck of the victim inevitably suggest the commission of suicide by the victim. Being mislead by the prosecution and defence and more particularly the police report this court committed error in reaching finding that a prima facie case u/s 306 IPC is made out against accused by order dated 16.02.18.

From the prosecution version of occurrence it is found that the dead-body of victim was detected being hanged inside a room of a flat opened by accused on continuous effort made by co-occupants of the building in which the flat was situated meaning that there was none else other than the accused inside the room when the dead body of the victim was detected in the flat. .....

Considering the circumstances under which the dead body of the victim was detected being hanged with the above noted marks of injuries including the bite marks on the body of the victim and tear of hymen of vagina of the victim, a prima facie case for offence punishable u/s 302/376 IPC is made out against the accused."

There is no merit in the argument on behalf of the petitioner that alteration of charge is barred by section 362 of the Code of Criminal Procedure. At this juncture it may be beneficial to refer to the relevant provision of section 362 of the Code of Criminal Procedure which reads as follows :

"**362. Court not to alter judgment**.- **Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.**"

By virtue of Section 216 of the Code of Criminal Procedure the Court is vested with the power to alter or add to any charge at any time before judgement

is pronounced. In view of the specific provision in the Code of Criminal Procedure under section 216 the bar under section 362 CrPC is not applicable in the case of alteration of charge by the Court. **Sabur Hossain's** case (supra) is therefore not apposite for the purpose of the present case. It is evident that by a well reasoned order the trial court altered the charge upon perusal of the materials in the case diary and was satisfied that a prima facie case has been made out against the accused for offences punishable under sections 302/376 IPC.

The order impugned does not suffer from any illegality or irregularity. Therefore no interference is warranted with the same.

The application being C.R.R. 2533 of 2018 accordingly stands dismissed.

It is made clear that no opinion has been expressed by this Court on the merits of the case and the trial court will decide the case in accordance with law without being influenced by any observation made hereinabove.

department Let a copy of this order be communicated forthwith to the trial court for expeditious trial and disposal of the case in accordance with law.

Urgent photostat certified copy of this order, if applied for, be given to the applicant upon compliance of requisite formalities.

(ASHA ARORA, J.)

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