

2-State vs Soni

Present: Sh. S.S Saini, Ld. APP for the State.
Accused on bail with counsel Sh. Rajiv Rana, Adv.

1. Arguments heard upon the application moved by complainant-applicant u/s 216 Cr.P.C. for alteration of charge. It is averred in the application that there is ample evidence on the court file that deceased died in this case due to rash and negligent driving of the accused. As such offence u/s 279 is liable to be added in the charge by way of alteration. It is just and equitable and for proper adjudication of the case, the charges framed against the accused may kindly be altered/amended. If the application is not allowed then serious prejudice would be caused to the complainant. Hence it is prayed that application be allowed.

2. In reply to the abovesaid application, it is averred by accused that in this case the Court had by order closed the evidence of prosecution and there is not any evidence or eye witness on the court file to prove that deceased died in this case due to the rash and negligent driving of the accused. The whole story has been concocted by the complainant just to implicate the accused in the above said false case. Denying other averments, accused/applicant, prayed for dismissal of the application.

3. I have heard the rival contentions of both the parties and have gone through the material available on record very carefully.

4. After hearing the submissions raised by the learned APP for the State and learned defence counsel, I am of the view that the application u/s 216 Cr.P.C. is maintainable at this stage when the complainant Balbir Singh in his statement u/s 161 Cr.P.C has stated that due to the rash and negligent driving of the accused the occurrence had taken place. Now at the time of framing of the charge the material available on record is to be seen. It has been settled by the Hon'ble Supreme Court of India in various judicial pronouncements held that at the stage of framing of charge court is required to evaluate materials and documents on record with a view to find out if the facts emerging

therefrom, taken at their face value disclose the existence of all the ingredients constituting alleged offence. At that stage Court is not expected to go deep into probative value of the material on record, the need to be considered is whether there is ground for presuming that the offence has been committed and not a ground for convicting accused has been made out. At that stage even strong suspicion founded on material which leads to the court to form a presumptive opinion as to the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of commission of that offence. Similarly in the present case the charge has been framed under Section 304-A IPC, but prima facie there is sufficient material to frame charge under Section 279 IPC also. Hence, the application under Section 216 Cr.PC stands allowed. Now the case is adjourned to 30.07.2019 for reframing of charge under Section 279 IPC and 304-A IPC.

Announced.

Date of Order : 02.07.2019

Sumit Verma-II

**Roopa Dhaliwal-UIDNo.PB0350
SDJM, Nangal.**