

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.

(Judicial Department)

OP No.02-B of 2019

Abid Hussain
Vs
Gul Tiaz Khan ASI, P.S Jani Khel.

JUDGMENT

Date of hearing _____ 26.05.2019 _____ .

Appellant-Petitioner: **By Mr. Peer Muhammad Yasin**
Wazir, Advocate.

Respondents: **State By Mr. Shahid Hameed Qureshi,**
Add: AG.

MUHAMMAD NASIR MAHFOOZ, J.--- Through instant Quashment petition under section 561- A Cr.PC, the petitioner Abid Hussain seeks, quashment of order dated 17.12.2018 of the learned Judicial Magistrate-I, Bannu, and that of order dated 12.01.2019 of learned sessions Judge, Bannu, whereby former dismissed application of petitioner for alteration of charge, while later dismissed revision petition of petitioner.

2. Brief facts of the case are that the petitioner had filed a complainant before learned Judicial Magistrate regarding beating by Gultiaz Khan Moharrir of the Police Station Domel, as a result of which he received server injuries and became incapacitated from his left eye. The learned Judicial Magistrate framed the charge against the accused/ respondent Gultiaz under sections 337-A(i) PPC. The petitioner moved an application before the learned Judicial Magistrate with respect to alteration of charge under section 336 PPC instead of section 337-A(i) PPC, but the same was declined. The petitioner moved criminal revision petition before the learned Sessions Judge, Bannu, but with no premium. Hence, the instant quashment petition.

3. Arguments heard and record perused.

4. Perusal of the record reveals that the accused/ respondent has been charged under section 337-A(i) PPC, on 24.03.2017, while the petitioner seeks alteration of charge under section 336 PPC.

Section 337-A(i) PPC is reproduced as under:

(i) Shajjah-i-khafifah to any person, shall be liable to daman and may also be punished with imprisonment of either description for a term which may extend to two years as ta'zir,

Section 336 PPC, is also reproduced as under:

336. Punishment for itlaf-i-salahiyyal-i-udw. *Whoever, by doing any act with the intention of causing hurt to any person, or with the knowledge that he is likely to cause hurt to any person, causes itlaf-i-salahiyyat-i-udw, of any person, shall, in consultation with the authorized medical officer, be punished with qisas and if the qisas is not executable keeping in view the principles of equality in accordance with the Injunctions of Islam, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to ten years as ta'zir.*

5. Perusal of the OPD slip, reveals that the petitioner has been checked by Dr. Muhammad Irfan Wazir, DHQ Hospital, Bannu, whereas the statement of said doctor, is recorded as PW-02, who categorically stated that he ***“found the***

patient having left traumatic contract and was booked for contract surgery” The Magistrate is bound to form his own opinion with regard to the offence so made out from the complaint and available record, while he is not bound by the opinion of local police, but the available record has not been considered by the learned trial Court, while framing the charge. The record available on file, clearly demonstrate that it would attract penal provision of section 336 PPC.

6. So far as, alteration of charge is concerned, Section 227, Cr.P.C itself provides in explicit and unambiguous terms that the court may alter or add to any charge at any time before pronouncement of the judgment. The section 227 Cr.PC is reproduced herein below for ready reference:-

"227. 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."

Bare perusal of the section transpires that charge may be altered or added before pronouncement of the judgment. It explicitly,

provides that before pronouncement of, judgment, charge can be altered at any stage.

7. Moreover, if the accused was charged for a major offence but the same was not proved, accused could be convicted for a minor offence. Section 238, Cr.P.C empowered the court to convict the accused for a minor offence though charged for a major offence, but not if the case is adverse, as in the instant case.

8. It is pertinent to mention that, if the charge is altered, the Court is bound to allow the prosecution and the accused to re-call and re-examine witnesses, already examined under section 231 Cr.PC, which is reproduced as under:

“231. Recall of witnesses when charge altered. 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 to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, and also to call any further witness whom the Court may think to be material.”

9. The outcome of the above discussion is that the learned trial Court has not evaluated the available record and erred in law by framing the charge, hence, the instant quashment petition is accepted, the impugned orders of both the Courts below are set aside and section of law 337-A(i) PPC is altered to section 336 PPC, as it is triable by learned Sessions Court, therefore, learned Judicial Magistrate, concerned is directed to send the case to the court concerned.

Announced.
26.05.2019

J U D G E