

CRIMINAL COURT CASES

VOL.73

REPORTS

2019(2)

2019(2) CRIMINAL COURT CASES 001 (S.C.)

SUPREME COURT OF INDIA

ABHAY MANOHAR SAPRE & R.SUBHASH REDDY, JJ.

Criminal Appeal No.1144 of 2009, D/12.02.2019.

Mala Singh & Ors.

Vs

State of Haryana

(i) Indian Penal Code, 1860, Ss.149, 34 — Difference between S.149 IPC and S.34 IPC - S.34 IPC does not by itself create any offence whereas S.149 IPC does. (Para 60)

(ii) Criminal Procedure Code, 1973, Ss.216, 386, 464 — Alteration of charge - An alteration of charge where no prejudice is caused to accused or prosecution is well within powers and jurisdiction of Court including Appellate Court - It is only when any omission to frame charge initially or till culmination of proceedings or at appellate stage results in failure of justice or causes prejudice, same may result in vitiating trial in appropriate case. (Paras 44 & 45)

(iii) Criminal Procedure Code, 1973, S.216, Indian Penal Code, 1860, Ss.149, 34 — Alteration of charge from S.149 IPC to S.34 IPC - If common object which is subject matter of charge u/s 149 IPC does not necessarily involve a common intention, then substitution of S.34 IPC for S.149 IPC might result in prejudice to accused and ought not therefore to be permitted - But if facts to be proved and evidence to be adduced with reference to charge u/s 149 IPC would be same, if charge were u/s 34 IPC then failure to charge accused u/s 34 IPC could not result in any prejudice and in such cases, substitution of S.34 IPC for S.149 IPC must be held to be formal matter. (Para 49)