

Court No. - 28

Case :- APPLICATION U/S 482 No. - 367 of 2024

Applicant :- Ram Bahal And 2 Other

Opposite Party :- State Of U.P Thru. Prin. Secy. Home Civil Secr. Lko. And Another

Counsel for Applicant :- Rajesh Tiwari, Harpreet Singh Taneja

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Heard Sri Rajesh Tiwari, learned counsel for the applicant, learned AGA for the State and perused the record.

The instant 482 application is being filed targeted against the order dated 29.08.2023 passed by learned Sessions Judge in S.T. No. 48 of 2018 (State Vs. Raja Yadav alias Vijay Kumar and others) arising out of case crime no. 0285 of 2017, under Sections 302, 307, 147, 148, 149, 506, 427, 396, 412, 120B IPC and Section 7 of Criminal law Amendment Act, P.S. Unchahar, Raibareilly.

Admittedly, when the charge was framed, it is only after due deliberation and argument, learned trial judge after applying his judicial mind frames charges against the charge sheeted/proposed accused, relying upon the material collected by I.O. during the investigation.

Interestingly off late after considerable delay after when all the prosecution witnesses were over, when the date was fixed for the statement under Section 313 Cr.P.C.. This application was for the obvious reasons and purpose was moved by the aforesaid application by the learned counsel for the applicant, namely, Ram Bahal, Ram Abhilakh and Krishna Kumar Yadav for amending the charge. Learned counsel for the applicant has drawn the attention of the Court to the provisions of Section 216 Cr.P.C., which reads thus :-

"216. 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. (3)If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge has been the original charge. (4)If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may, either direct a new trial or adjourn the trial for such period as may be necessary. (5)If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

It has been contended by learned counsel for the applicant that it is scope and ambit of learned trial judge to amend/alter the charge at any stage prior to delivery of judgement.

Learned trial judge is well within the jurisdiction to either or alter or at any charge in exercise of power under Section 216 Cr.P.C., which confers to the court to alter the charge. and it is in the exclusive domain and sole prerogative of the concerned trial judge.

Admittedly the applicants are accused of aforesaid offence and facing the prosecution under Sections 396 and 412 IPC. After inordinate delay at the stage of the defense to be laid by the defense counsel, instead of clarifying his position under Section 313 Cr.P.C. the counsel for defense abruptly moved an application under Section 216 Cr.P.C. for adding/altering the charge. This application is being moved for the obvious reasons for carrying the further delay in the trial.

The right of the parties in this regard is extremely limited and narrow. No addition or alteration or objection with regard thereto could be raised as a matter of right. As mentioned earlier, it falls within the exclusive domain of trial judge to exercise his power. It is unheard of that the accused is knocking the doors of trial judge to amend the 'charge' at the fag end of the trial. Moreover this is sole and exclusive prerogative of the learned trial judge.

In the case of **Jasvinder Saini and others Vs. State (Government of NCT of Delhi)** reported in **(2013) 7 SCC 256** has occasioned to examine Section 216 Cr.P.C. which held as under :-

"15. This Court in Jasvinder Saini v. State (Government of NCT of Delhi) (2013) 7 SCC 256, had an occasion to examine the scope of Section 216 CrPC and held as follows:

"11.. the court's power to alter or add any charge is unrestrained provided such addition and/or alteration is made before the judgment is pronounced. Sub-sections (2) to (5) of Section 216 deal with the procedure to be followed once the court decides to alter or add any charge. Section 217 of the Code deals with the recall of witnesses when the charge is altered or added by the court after commencement of the trial. There can, in the light of the above, be no doubt about the competence of the court to add or alter a charge at any time before the judgment. The circumstances in which such addition or alteration may be made are not, however, stipulated in Section 216. It is all the same trite that the question of any such addition or alternation would generally arise either because the court finds the charge already framed to be defective for any reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.

12. In the case at hand the evidence assembled in the course of the investigation and presented to the trial court was not found sufficient to call for framing a charge under Section 302 IPC."

17. Section 216 CrPC gives considerable powers to the trial court, that is, even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add to any charge, subject to the conditions mentioned therein. The expressions "at any time" and before the "judgment is pronounced" would indicate that the power is very wide and can be exercised, in appropriate cases, in the interest of justice,

but at the same time, the courts should also see that its orders would not cause any prejudice to the accused.

18. Section 216 CrPC confers jurisdiction on all courts, including the Designated Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced and sub-sections (2) to (5) prescribe the procedure which has to be followed after that addition or alteration. Needless to say, the courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the court, which has some connection or link with the charges sought to be amended, added or modified. In other words, alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the court. (See Harihar Chakravarty v. State of West Bengal AIR 1954 SC 266). Merely because the charges are altered after conclusion of the trial, that itself will not lead to the conclusion that it has resulted in prejudice to the accused because sufficient safeguards have been built in in Section 216 CrPC and other related provisions."

Yet another interesting feature of the case that we have re-occasion to peruse the application under Section 216 Cr.P.C. whereby the accused persons have not challenged the prayer of charge under Section 396 IPC but only limited prayer for instead of Section 412 IPC it should be Section 411 IPC.

We have perused the order impugned, it is clearly mentioned that this application was moved after recording the statement under Section 313 Cr.P.C. and when the date was fixed for determination the defense and instead of determination the evidence of defense witnesses abruptly the aforesaid application was moved for tangent reasons mentioned above.

Learned trial judge while disposing of the application under Section 238 Kha have closed defense witnesses and fixes 04.09.2023 for argument.

The matter relates to the year 2018. The Court cannot install the proceeding of the case for one reason or other or further complicate the issue when the charges were framed, the accused persons were duly heard and only after the application of mind, the learned trial judge has framed the charge under Sections 396 and 412 IPC. The Court cannot change its steps based on whims and caprices of the accused persons.

The order passed by learned trial judge is sound and requires no interference in exercise of power under Section 482 Cr.P.C.. The present 482 Cr.P.C. application has got no merit and accordingly **rejected**.

However, in the interest of justice, the learned trial judge is directed to provide one occasion, on or before 10.02.2024 for tendering defence evidence (if any) failing thereafter, the opportunity for tendering the defence would be closed and shut-down.

Order Date :- 19.1.2024

Abhishek Sri